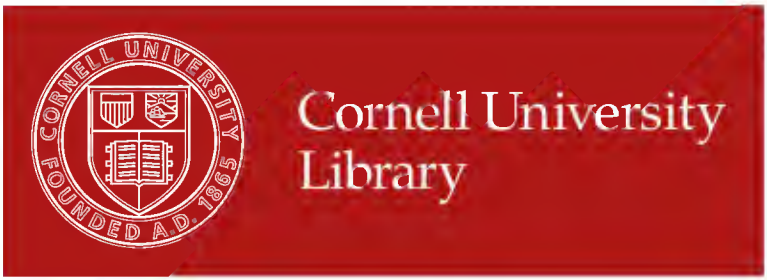

THE RAILROAD LAWS

OF THE

STATE OF NEW YORK.

COMPRISING

AN ANALYTICAL ARRANGEMENT OF THE ENTIRE STATUTE LAWS OF THE STATE,

WITH

NOTES OF JUDICIAL DECISIONS.

TO WHICH ARE ADDED

A TABLE OF RAILROAD CHARTERS AND LOCAL ENACTMENTS,

AND

AN APPENDIX OF FORMS.

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NEW YORK:
BAKER, VOORHIS & CO., LAW PUBLISHERS,
66 NASSAU STREET.
1872.

BAKER & GODWIN, PRINTERS
Printing-House Square.

PREFACE.

THE present volume is designed to reduce to a compact and accessible form, the Law of Railroads as it has been declared by the Legislature, and explained and construed by the Courts of this State. The arrangement adopted throughout the work, is believed to be the best of the many plans suggested. It would be difficult, to say the least, to keep the order in which the sections of the general act occur, while attempting an arrangement more comprehensive than one of mere *juxta position*. Thus, in the general act, the manner of acquiring real estate for railroad purposes against the owner's consent (§§ 14–18), is described *before* the proceedings to determine the route (§ 22); and the management of its trains, as for example, the formation of passenger trains (§ 38), the transportation of persons and property (§§ 35, 36, 37) &c., *before* the construction of its road is disposed of,—as the erection of railroad fences (§ 44), which is a condition precedent to the operation of the road (see Laws 1854, ch. 282, § 8), or the erection of sign-boards at crossings (§ 40). Again, the sections themselves, in some cases, contain a diversity of subject-matter, which would of itself necessitate a classification under several heads. Section three, of chapter five hundred and eighty-two, of the Laws of eighteen hundred and sixty-four, contains, for example, two totally distinct and irrelevant provisions,—one, providing that the cars shall be supplied with drinking-water for the use of the passengers, and the other, that where the main route of road does not exceed fifteen miles, the board of directors may consist of seven stockholders. These are a few of the reasons which prompted a departure from the numerical order of the sections of the general act.

The statute law relative to the subject, has been fully and literally set forth. Where, as in a few instances, a section has been resolved with regard to its subject-matter, and separated, the separation has been invariably indicated by a foot note, with a reference to the page on which the remainder of the section would be found in full. This separation has been avoided, wherever it could be consistent with the plan, and in each of the four instances in which it occurs, the propriety of such separation, it is believed, will be apparent.

A table of reference to special charters and local enactments has been added for consultation, in connection with the general laws. The utility of such a table is obvious.

New York, December, 1871.

R. B. McMASTER.

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THE RAILROAD LAWS

OF THE

STATE OF NEW YORK.

I.

OF THE FORMATION OF THE COMPANY; AND HEREIN OF THE ARTICLES OF ASSOCIATION.

Articles of Association.— Any number of persons, not less than twenty-five, may form a company for the purpose of constructing, maintaining and operating a railroad for public use in the conveyance of persons and property, or for the purpose of maintaining and operating any unincorporated railroad already constructed for the like public use; and for that purpose may make and sign articles of association, in which shall be stated the name of the company; the number of years the same is to continue; the places from and to which the road is to be constructed, or maintained and operated (*a*); the length of such road as near as may be (*b*), and the name of each county in this State through or into which it is made, or intended to be made; the amount of the capital stock of the company, which shall not be less than ten thousand dollars for every mile of road constructed, or proposed to be constructed, and the number of shares of which said capi-

tal stock shall consist, and the names and places of residence of thirteen directors of the company, who shall manage its affairs for the first year, and until others are chosen in their places. Each subscriber to such articles of association shall subscribe thereto his name, place of residence, and the number of shares of stock he agrees to take in said company (*c*). On compliance with the provisions of the next section, such articles of association may be filed in the office of the Secretary of State (*d*), who shall indorse thereon the day they are filed, and record the same in a book to be provided by him for that purpose; and thereupon the persons who have so subscribed such articles of association, and all persons who shall become stockholders in such company, shall be a corporation by the name specified in such articles of association (*e*), and shall possess the powers and privileges granted to corporations, and be subject to the provisions contained in title three of chapter eighteen of the first part of the Revised Statutes, except the provisions contained in the seventh section of the said title (*f*). (Laws 1850, chap. 140, § 1.)

(*a*) **The termini.** The articles of association set forth that the company was organized for the purpose of constructing a railroad in the counties of Kings and Queens, "to commence in the city of Brooklyn at some convenient point, and to terminate at Newtown, Queens County." It appeared that there was a township of Newtown and a village of the same name included within the township, the former bordering upon the city of Brooklyn, while the village was distant from Brooklyn about twenty-five miles. *Held*, that the articles contemplated the construction of a road not only *to* but *into* the township of Newton (Mason *v.* Brooklyn City & Newtown R. Co., 35 Barb. 373. To the same effect, Mohawk Bridge Co. *v.* Utica & Schenectady R. Co., 6 Paige, 554). And where one of the termini was located by the company at an eligible point in Brooklyn, under its charter, and the particular location was adhered to for some years, it was *held*, concluded by its acts (Brooklyn Central R. Co. *v.* Brooklyn City R. Co., 32 Barb. 358. See, also, Hudson &c. Co. *v.* N. Y. & Erie R. Co., 9 Paige, 323.)

(*b*) **Length of road.** Only such an approximate estimate of the length of the proposed road, is demanded under the above section, as may be made in good faith, without previous actual survey and location (Buffalo & Pittsburgh R. Co. *v.* Hatch, 20 N. Y. 157). A misstatement of the length of the road is not a defence to an action to recover stock subscriptions, where there is no pretense of fraud or negligence in such statement (Troy & Rutland R. Co. *v.* Kerr, 17 Barb. 581); nor will mere neglect to construct the specified line of road, even without legislative sanction, discharge the liability of a subscriber to pay for his stock, unless the powers and existence of the company have ceased in consequence of such neglect (*Id.*) But *it seems*, that in a proceeding instituted by the people to dissolve the corporation, an inquiry into the actual length of the road for the purpose of showing fraud, would be proper (Buffalo & Pittsburgh R. Co. *v.* Hatch, *supra*).

(*c*) **Form of subscription.** A subscription made in a firm name, is not inconsistent with the requisition that "each subscriber to such articles of association shall subscribe thereto *his name*, place of residence, and the number of shares of stock *he* agrees to take in said company" (Ogdensburgh, Rome &c. R. Co. *v.* Frost, 21 Barb. 541). Where a subscription was made by one in his own name, for fifty shares of stock of the corporation, and immediately afterwards he subscribed for fifty other shares, adding to his second signature the letters "Exr."—*Held*, that the pendency of an action to enforce payment of the first subscription afforded no sufficient grounds for abating an action to enforce payment of the second subscription, since the subscriptions themselves were separate contracts (Erie & N. Y. City R. Co. *v.* Patrick, 2 Keyes, 256); but where one of several heirs, subscribed—"Estate of N. W. 100 shares, $10,000"—it was held that neither he, nor his co-heirs, were bound by it (Troy & Boston R. Co. *v.* Warren, 18 Barb. 310). Whatever may be the form of the subscription, it carries with it in all cases a promise to pay, unless, indeed, the obligation to pay is plainly excluded by the language of the subscription (Palmer *v.* Lawrence, 3 Sandf. 161; Hartford & N. H. R. Co. *v.* Croswell, 5 Hill, 383; Spear *v.* Crawford, 14 Wend. 20; Stanton *v.* Wilson, 2 Hill, 153; Northern R. Co. *v.* Miller, 10 Barb. 260; Rensselaer &c. Plankroad Co. *v.* Barton, 16 N. Y. 457, *note;* Buffalo &c. R. Co. *v.* Dudley, 14 N. Y. 336). But subscriptions conditioned on payment of dividends, or imposing restraints on the power of the directors to call in stock, are void as against public policy (Troy & Boston R. Co. *v.* Tibbits, 18 Barb. 297).

Subscribers become corporators, when. No one who has subscribed to the articles of association before the corporation came into being is a corporator, or a member of the corporation, unless the articles so subscribed by him have been filed as required by the act. Thus where duplicate sets of articles were used to facilitate subscriptions, one set of which was subscribed by the defendant, but was omitted to be filed;

Held, that the corporators, by such omission, rejected him as a proposed member of the corporation, and had no claim on him (Erie & N. Y. City R. Co. *v.* Owen, 32 Barb. 616). But, *quære*, whether such a subscriber had rights, which, had he complained, would have been protected (*Id.*) The railroad company is not created, and does not become a legal body, until the articles of association are duly filed, and until the requirements of the statute are complied with, a subscription to the articles is simply a proposition to take a specified number of shares of the capital stock of the proposed company. Prior to the act of incorporation, such proposition may be revoked, and is not a binding promise to pay (Burt *v.* Farrar, 24 Barb. 518). But in Lake Ontario &c. R. Co. *v.* Mason (16 N. Y. 451), it was said that, "until the incorporation of the company was perfected, the *other subscribers* had an interest in its execution and performance, of which *they* could not be deprived by the act of the defendant." When, however, the incorporation of the company is perfected, the subscription becomes binding (*Id.*; see also remarks of Cowen, J., in Stanton *v.* Wilson, 2 Hill, 153) and constitutes, if not an *express* at least an *implied* promise, to pay, which will sustain an action to recover calls thereon (Ogdensburgh &c. R. Co. *v.* Frost, 21 Barb. 541; Lake Ontario &c. R. Co. *v.* Mason, 16 N. Y. 451; Buffalo &c. R. Co. *v.* Dudley, 14 N. Y. 336; Northern R. Co. *v.* Miller, 10 Barb. 260; Hartford & N. H. R. Co. *v.* Croswell, 5 Hill, 383. See also Dayton *v.* Borst, 31 N. Y. 435; Schenectady & Saratoga R. Co. *v.* Thatcher, 11 N. Y. 102; Rensselaer &c. Plankroad Co. *v.* Barton, 16 N. Y. 457, *note*). Where, however, the defendant merely signed a *preliminary* subscription paper, previous to the incorporation of the company, whereby he agreed to take the amount of capital stock placed opposite his name, but did not subsequently subscribe either to the articles of association or to the capital stock in the books opened by the directors after incorporation (Laws 1850, chap. 140, § 4), it was *held* that he did not become a stockholder, and was not liable on the preliminary subscription (Troy & Boston R. Co. *v.* Tibbits, 18 Barb. 297. The justness of this decision is doubted in Poughkeepsie &c. Plankroad Co. *v.* Griffin, 21 Barb. 454, Brown, J., dissenting).

(*d*) **Articles of association to be filed.** Where the articles of association filed with the Secretary of State, consist of separate but exact copies of each other, each being signed by a different portion of the members of said company, the several papers are to be regarded as one instrument (Lake Ontario &c. R. Co. *v.* Mason, 16 N. Y. 451).

(*e*) **Corporate name.** Railroad companies are especially excepted from the operation of the statutory provision authorizing corporations organized under New York laws, to change their names by petition to the general term of the Supreme Court (Laws 1870, chap. 322, § 1). A mistake in naming the corporation, in a suit to which it is a

party, if not pleaded in abatement, must be deemed to have been waived (2 Rev. Stat. 459, § 14).

(*f*) **Company subject to provisions of Revised Statutes.** The insertion of such a clause is wholly a work of supererogation, so far as concerns its expressed intent; had it been omitted, the company would still have possessed all the powers, and been subject to all the restrictions and liabilities specified in the third title, not inconsistent with its charter (Bowen *v.* Lease, 5 Hill, 221. See also 1 Rev. Stat. 600, § 2). Such a proviso, that the railroad corporation shall be subject to the provisions of title three, chapter eighteen of the first part of the Revised Statutes, does not by implication, exempt it from the operation of title four of the same chapter (*Id.*); and the company may still be liable under the provisions of title four (*Id.*)

The seventh section here alluded to, reads as follows: "If any corporation hereafter created by the legislature shall not organize and commence the transaction of its business within one year from the date of its incorporation, its corporate powers shall cease." The laws of 1846 (chap. 155, § 1), as well as the laws of 1850 (chap. 140, § 1), render this section of the Revised Statutes inapplicable to any act for incorporating a railroad company, which has, or shall have in its provisions the time in which it shall be forfeited for non-user.

Constitutional provision regarding incorporation. The State constitution provides, that corporations may be formed under general laws; but shall not be created by special acts except for municipal purposes, and in cases where, in the judgment of the legislature, the object of the corporation cannot be attained under general laws (Const. Art. 8, § 1). But there is no constitutional provision which prohibits a railroad franchise being conferred upon, or exercised by individuals, nor does there appear to be any objection to making such rights assignable (Per Barnard, J., N. Y. & Harlem R. Co. *v.* Forty-second St. & Grand St. Ferry R. Co., 50 Barb. 309).

Conditions upon which articles are filed.

Such articles of association shall not be filed and recorded in the office of the Secretary of State, until at least one thousand dollars of stock for every mile of railroad proposed to be made is subscribed thereto, and ten per cent paid thereon in good faith, and in cash, to the directors named in said articles of association (*a*); nor until there is indorsed thereon, or annexed thereto, an affidavit made by at least three of the directors named in said articles, that the amount

of stock required by this section has been in good faith subscribed, and ten per cent paid in cash thereon as aforesaid (*b*), and that it is intended in good faith to construct or to maintain and operate the road mentioned in such articles of association, which affidavit shall be recorded with the articles of association, as aforesaid. (Laws 1850, chap. 140, § 2.)

(*a*) **Payment of ten per cent.** The payment of ten per cent upon the subscriptions, is not required to be made upon each separate share subscribed. The section only contemplates the payment of ten per cent upon such amounts as in the aggregate make a total subscription of $1,000 for every mile of road proposed to be constructed (Lake Ontario &c. R. Co. *v.* Mason, 16 N. Y. 451); and the subsequent provision in the fourth section of the same act, requiring ten per cent on every subscription, to be paid, applies only to subscriptions made after organization, as provided for in that section (*Id.* Ogdensburgh &c. R. Co. *v.* Frost, 21 Barb. 541). It is immaterial whether there were not some subscriptions upon which the ten per cent had not been paid (Ogdensburgh &c. R. Co. *v.* Frost, *supra*). Nor is the payment of the ten per cent by each original stockholder a condition precedent to the company's right of action for calls (*Id.*)

(*b*) **Affidavit of directors.** Where the affidavit of the directors, filed to procure incorporation, stated that the requisite sum "had been in good faith subscribed to the capital stock of said company, and that ten per cent had been paid in cash on said subscriptions," *held* a sufficient compliance with the provisions of this section. It is necessarily implied by such allegations that the payment of ten per cent was made to the directors, and in good faith (Buffalo & Pittsburgh R. Co. *v.* Hatch. 20 N. Y. 157). And where it appeared, from the articles of association, that the length of the road was seventy-five miles, and the affidavit of the directors annexed, alleged that $84,100 had been subscribed in good faith to the capital stock, *held*, that it was sufficient evidence that at least $1,000 of stock, for every mile of road, was subscribed (*Id.*)

Organization of companies using narrow gauge.—Corporations may be formed under the act entitled "An act to authorize the formation of railroad corporations, and to regulate the same," passed April second, eighteen hundred and fifty, for the pur-

pose of constructing and operating railroads for public use in transporting persons and property of the gauge of three feet and six inches or less, but not less than thirty inches within the rails, whenever capital stock of said corporation to the amount of five thousand dollars for every mile of such railroad proposed to be constructed and operated has been in good faith subscribed; and whenever five thousand dollars or more for every mile of such railroad proposed to be constructed shall be in like manner subscribed, and ten per cent thereon in good faith actually paid in cash to the directors named in the articles of association, and an affidavit made by at least three of said directors, and indorsed on or annexed to said articles, that the amount of stock hereby required has been so subscribed as aforesaid, and ten per cent thereon paid as aforesaid, and that it is intended in good faith to construct and operate such railroad, then said articles with such affidavit may be filed and recorded in the office of Secretary of State; provided said articles contain all the other facts required by law to be stated in articles of association made for organizing railroad corporations, under said act entitled "An act to authorize the formation of railroad corporations, and to regulate the same," passed April second, eighteen hundred and fifty; and all of the provisions of said last-mentioned act shall apply to corporations formed for the construction and operating of railroads of the gauge herein above mentioned, except as herein provided or otherwise provided by law. (Laws 1871, chap. 560, § 5.)

Organization of railroads operated by stationary power.—It shall be lawful for any number of persons, not less than ten, to form themselves into a company for constructing, maintaining, and operating

a railway for public use, in the conveyance of persons and property, by means of a propelling rope or cable attached to stationary power, and upon compliance with the provisions of the first three sections of the act to which this is supplementary, they shall become a body corporate and politic, according to the provisions of said act; *Provided*, That the directors of any such company may be limited to any number not less than five, to be specified in the articles of association. (Laws of 1866, chap. 697, § 1.)

Any such company may style itself by the name of the inventor or patentee of the particular method of propulsion used, together with such local designation as the associates may deem desirable, and shall, by such name set forth in their articles of association, have and enjoy all the powers and privileges, and be subject to the liabilities mentioned in the aforesaid act passed April second, eighteen hundred and fifty, so far as the same are comprised in the first twenty-six sections and the twenty-eighth section thereof. (Laws 1866, chap. 697, § 2.)

Companies formed under the provisions of this supplementary act may fix and collect rates of fare on their respective roads, not exceeding five cents for each mile or any fraction of a mile, for each passenger, and with right to a minimum fare of ten cents. (Laws 1866, chap. 697, § 3.)

It shall be lawful for any company formed under this act to construct, and operate, and maintain a road or roads in any other State or country in which the same does not conflict with the laws of such State or country; provided the assent of inventors or patentees are first obtained in the same manner and extent as would be necessary within the United States. (Laws 1866, chap. 697, § 4.)

Company may alter and amend articles of association.—Whenever any railroad company shall have located its road so as to terminate at any railroad previously constructed or located, whereby communication might be had with any incorporated city of this State, and any other railroad company shall subsequently locate its road so as to intersect the road of said first-mentioned company, and thereby, by itself or its connections, afford communication with such city, then and in such case said first-mentioned company may alter and amend its articles of association so as to have its road terminate at the point of intersection with said road so subsequently located; provided the consent of the stockholders representing or owning two-thirds of the stock of said company shall have been first obtained thereto. (Laws 1871, chap. 560, § 2.)

It is also provided, that whenever two companies shall agree upon the construction of so much of the line of railroad as is common to both of them, by one of the companies, the company which is not to construct such portion of the road, may alter and amend its articles of association, so as to terminate its line at the points of intersection, and may reduce its capital to a sum not less than $10,000 for each mile of the road constructed or proposed to be constructed in such amended articles of association. (Laws 1851, chap. 19, § 1; Laws 1854, chap. 282, § 13.) The directors may, also, upon changing the location of a portion of their line, and constructing it in an adjoining State, reduce the capital specified in the articles of association, to such an amount as may be deemed proper, but not less than $10,000 for every mile of road to be actually constructed within this State. (Laws 1851, chap. 19, § 2.)

Irregularity in articles of association, how cured.—The directors of any corporation, organized under any general act for the formation of companies, in whose original certificate of incorporation any informality may exist, by reason of an omission of any matter required to be therein stated, are hereby

authorized to make and file an amended certificate or certificates of incorporation to conform to the general act under which said corporation may be organized; and, upon the making and filing of such amended certificate, the said corporation shall, for all purposes, be deemed and taken to be a corporation from the time of filing such original certificate. (Laws 1870, chap. 135, § 1.)

They may also be cured by special act, recognizing the existence of the corporation (Black River & Utica R. Co. *v.* Barnard, 31 Barb. 258; White *v.* Coventry, 29 *id.* 305; White *v.* Ross, 15 Abb. Pr. 66). Suits or proceedings pending, or rights accrued against the company at the time of filing the amended certificate, are not affected thereby. (Laws 1870, chap. 135, § 2.)

II.

OF THE POWERS OF THE CORPORATION.

Corporate powers.—Every corporation formed under this act shall, in addition to the powers conferred on corporations in the third title of the eighteenth chapter of the first part of the Revised Statutes (*a*), have power,

1. To cause such examination and surveys for its proposed railroad to be made, as may be necessary to the selection of the most advantageous route; and for such purpose, by its officers or agents and servants, to enter upon the lands or waters of any person, but subject to responsibility for all damages which shall be done thereto.

2. To take and hold such voluntary grants of real estate and other property as shall be made to it, to aid in the construction, maintenance and accommodation of its railroad; but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

3. To purchase, hold and use all such real estate and other property as may be necessary for the construction and maintenance of its railroad, and the stations and other accommodations necessary to accomplish the objects of its incorporation; but nothing herein contained shall be held as repealing, or in any way affecting the act entitled "An Act authorizing the construction of railroads upon Indian lands," passed May 12, 1836.

4. To lay out its road not exceeding six rods in width, and to construct the same; and for the pur-

poses of cuttings and embankments, to take as much more land as may be necessary for the proper construction and security of the road, and to cut down any standing trees that may be in danger of falling on the road, making compensation therefor as provided in this act for lands taken for the use of the company.

5. To construct their road across, along, or upon any stream of water, water-course, street, highway, plankroad, turnpike or canal, which the route of its road shall intersect or touch; but the company shall restore the stream or water-course, street, highway, plankroad and turnpike thus intersected or touched, to its former state, or to such state as not unnecessarily to have impaired its usefulness. Every company formed under this act shall be subject to the power vested in the canal commissioners by the seventeenth section of chapter two hundred and seventy-six of the session laws of eighteen hundred and thirty-four. Nothing in this act contained shall be construed to authorize the erection of any bridge, or any other obstructions across, in or over any stream or lake navigated by steam or sail boats, at the place where any bridge or other obstructions may be proposed to be placed; nor to authorize the construction of any railroad not already located in, upon or across any streets in any city, without the assent of the corporation of such city. Nor to authorize any such railroad company to construct its road upon and along any highway, without the order of the supreme court of the judicial district in which said highway is situated, made at a special term of said court, after at least ten days' notice in writing of the intention to make application for said order shall have been given to the commissioners of highways of the town in which said highway is situated. (As amended Laws 1864, chap. 582, § 1.)

6. To cross, intersect, join and unite its railroad with any other railroad before constructed, at any point on its route, and upon the grounds of such other railroad company, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connections. And every company whose railroad is or shall be hereafter intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined by commissioners, to be appointed by the court as is provided in this act in respect to acquiring title to real estate.

7. To take and convey persons and property on their railroad by the power or force of steam or of animals, or by any mechanical power (*b*), and to receive compensation therefor.

8. To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of their passengers, freight and business.

9. To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor; but such compensation, for any passenger and his ordinary baggage, shall not exceed three cents per mile.

10. From time to time to borrow such sums of money as may be necessary for completing and finishing or operating their railroad, and to issue and dispose of their bonds for any amount so borrowed, and to mortgage their corporate property and franchises to secure the payment of any debt contracted by the

company for the purposes aforesaid; and the directors of the company may confer on any holder of any bond issued for money borrowed as aforesaid, the right to convert the principal due or owing thereon, into stock of said company, at any time not exceeding ten years from the date of the bond, under such regulations as the directors may see fit to adopt. (Laws 1850, chap. 140, § 28.)

(*a*) **Powers conferred by Revised Statutes.** The powers thus granted to railroad companies, as corporations, are: (1) To have succession by its corporate name, for the period limited in its charter. (2) To sue and be sued, complain and defend, in any court of law or equity. (3) To make and use a common seal, and alter the same at pleasure. The corporate seal, where authorized or required by law, may be affixed by making an impression directly on the papers (Laws 1848, chap. 197, § 1). (4) To hold, purchase and convey such real and personal estate, as the purposes of the corporation shall require, not exceeding the amount limited in its charter. (5) To appoint such subordinate officers and agents, as the business of the corporation shall require, and to allow them a suitable compensation. (6) To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of stock (1 Rev. Stat. 599, § 1). But no corporation is to possess or exercise any corporate powers, in addition to those enumerated, unless the same are expressly given in its charter, or the act under which it is incorporated, or necessary to the exercise of the powers so enumerated and given (*Id.* § 3). Every corporation, however, has, besides the powers expressly conferred upon it by its charter, certain common law powers, which may be exercised in furtherance of the purposes of incorporation (East New York & Jamaica R. Co. *v.* Lightall, 6 Robt. 407); but these powers do not differ very essentially from those conferred by title three of chapter eighteen, of the first part of the Revised Statutes (Bowen *v.* Lease, 5 Hill, 221). Section four provides that "no corporation, not expressly incorporated for banking purposes, shall, by any implication or construction, be deemed to possess the power of discounting bills, notes, or other evidences of debt, of receiving deposits, of buying gold and silver, bullion, or foreign coins, of buying and selling bills of exchange, or of issuing bills, notes, or other evidences of debt, upon loan, or for circulation as money."

(*b*) **Mechanical power.** Authority to use "any mechanical power," authorizes the use of steam power (Moshier *v.* Utica & Schenectady R. Co., 8 Barb. 427.)

Exercise of powers, how regulated. The exercise of any franchise, liberty or privilege, not allowed by the charter of the corporation, may be restrained by injunction (2 Rev. Stat. 462, § 31; Code of Procedure, § 219; Laws 1870, chap. 151). And on an attempt by the company to abandon or discontinue the use of a portion of their road, the People through their Attorney-General may compel it to repair and operate the same. (The People *v.* Albany & Vermont R. Co., 19 How. Pr. 523; see also The People *ex rel.* Town of Schaghticoke *v.* Troy & Boston R. Co. 37 How. Pr. 427.)

III.

OF THE CORPORATE EXISTENCE; AND HEREIN OF THE DISSOLUTION.

Corporate existence must be proved, when. In suits brought by or against a corporation created by or under any statute of this State, it shall not be necessary to prove on the trial of the cause, the existence of such corporation, unless the defendant shall have alleged in the answer in the action that the plaintiffs or defendants, as the case may be, are not a corporation (2 Rev. Stat. 458, § 3).

Who may question corporate existence. Neither a defendant who has contracted with the corporation *de facto;* nor a stockholder who has acted as director thereof, is permitted to plead as a defence to an action by the company, an irregularity or defect in its organization, as affecting its corporate capacity to contract or sue, or that it had incurred a forfeiture (Palmer *v.* Lawrence, 3 Sandf. 161; Steam Navigation Co. *v.* Weed, 17 Barb. 378; Eaton *v.* Aspinwall, 6 Duer, 176; s. c. 13 How. Pr. 184; s. c. 3 Abb. Pr. 417; Sands *v.* Hill, 42 Barb. 651). Such objections are only available on behalf of the People of the State (White *v.* Coventry, 29 Barb. 305; Hyatt *v.* Esmond, 37 *id.* 601; Cooper *v.* Shaver, 41 *id.* 151; White *v.* Ross, 15 Abb. Pr. 66; Sands *v.* Hill, *supra*). Nor can the defendant, plead as a defence, that the corporation was dissolved unless such dissolution had been established by judgment of the court (Bank of Niagara *v.* Johnson, 8 Wend. 645; People *v.* President &c. of Manhattan Co. 9 *id.* 351). But the defendant may set up that the charter had been repealed, or surrendered (Adam *v.* Beach, 6 Hill, 271), and it *seems* may show that it had expired by its own limitation (*Id*). A general denial pleaded in the answer is not sufficient to put the company to the proof of its corporate existence, in an action brought by it against the defendant (Bank of Genesee *v.* Patchin Bank, 13 N. Y. 309).

Act of incorporation, how pleaded.—In actions by or against any corporation created by or

under any law of this State, it shall not be necessary to recite the act or acts of incorporation, or the proceedings by which such corporation was created, or to set forth the substance thereof, but the same may be pleaded by reciting the title of the act. (2 Rev. Stat. 459, § 13.)

Evidence of incorporation.—A copy of any articles of association filed and recorded in pursuance with this act, or of the record thereof, with a copy of the affidavit aforesaid indorsed thereon or annexed thereto, and certified to be a copy by the Secretary of this State, or his deputy, shall be presumptive evidence of the incorporation of such company, and of the facts therein stated. (Laws 1850, chap. 140, § 3.)

In actions by or against the company, its corporate character is to be determined from the articles of association and affidavit filed and recorded with the Secretary of State (Buffalo &c. R. Co. *v.* Hatch, 20 N. Y. 157); and the certificate of the Secretary of State to a copy of the articles of association, is evidence of the filing and recording, and of the time when these acts were done (*Id*). All that a corporation is called upon to prove, to establish its existence, in a litigation with individuals dealing with it, is its charter and user under it (Wood *v.* Jefferson County Bank, 9 Cow. 194; Utica Ins. Co. *v.* Tillman, 1 Wend. 555; Same *v.* Cadwell, 3 *id.* 296; Fire Department of N. Y. *v.* Kip, 10 *id.* 266; McFarlan *v.* Triton Ins. Co., 4 Den. 392; Jones *v.* Dana, 24 Barb. 395).

Term of existence, how extended.—Any company heretofore formed, or hereafter to be formed under the provisions of the act entitled "An act to authorize the formation of railroad corporations, and to regulate the same," past April second, eighteen hundred and fifty, or the acts amendatory thereof, may extend the time for the continuance of such company beyond the time mentioned in the original articles of association for such purpose, by the consent of two-thirds in amount of the stock held by the stockholders

of said company in a certificate to be signed and proved or acknowledged by the stockholders signing the same, so as to entitle it to be recorded, which certificate shall be filed in the office of the Secretary of State, who shall upon such filing, record the same in the book kept in his office for the record of articles of association of railroad companies under said act, and make a memorandum of such record in the margin of the original articles of association in such book; and thereupon the time of the existence of such company shall be extended as designated in such certificate. (Laws 1866, chap. 697, § 5.)

The laws of 1867, also furnish a provision regarding such extension, but it is only applicable to corporations then formed and in existence. The act is as follows:

"Any company or corporation heretofore formed under any general law of this State, at any time within three years of the expiration of its term of existence, may extend the term of existence of such company or corporation beyond the time mentioned in the original articles of association or certificate of incorporation, by the consent of the stockholders owning two-thirds in amount of the capital stock of such company or corporation, in and by a certificate to be signed by such stockholders, and acknowledged or proved, so as to enable them to be recorded, which certificate shall be filed in the office of the county in which its original certificate or articles of association, if any, are filed or recorded; and the said Secretary of State and the clerk of such county shall, upon such filing, record the same in the books kept in their respective offices for the record of articles of association, and make a memorandum of such record in the margin of the original articles of association, in such book, and thereupon the time of existence of such company shall be extended, as designated in such certificate, for a term not exceeding the term for which said company or corporation was organized in the first instance" (Laws 1867, chap. 937, § 1).

Forfeiture for non-user.—If any corporation formed under an act entitled "An act to authorize the formation of railroad corporations, and to regulate the same," passed April second, eighteen hundred and fifty, shall not, within five years after its articles of as-

sociation are filed and recorded in the office of the Secretary of State, begin the construction of its road, and expend thereon ten per cent on the amount of its capital, or shall not finish its road and put it in operation in ten years from the time of filing its articles of association, as aforesaid, its corporate existence and powers shall cease. (Laws 1850, chap. 140, § 47; Am'd Laws 1864, chap. 582, § 5; Am'd Laws 1867, chap. 775, § 1.)

Where the charter provided that the company should, within a certain number of years, perform certain acts, or in default thereof be dissolved: *Held*, that the proviso was a mere defeasance, and that the corporate existence continued until dissolved by legal sentence (Brooklyn Central R. Co. *v.* Brooklyn City R. Co., 32 Barb. 358; People *v.* Manhattan Co., 9 Wend. 351; Matter of Ref. Presb. Church of N. Y., 7 How. Pr. 476; Caryl *v.* McElrath, 3 Sandf. 176). Nor can the cause of forfeiture be enforced collaterally, or incidentally, or in any way but by a direct proceeding against the company, so that it may have an opportunity to answer (Towar *v.* Hale, 46 Barb. 361). The only remedy for non-user or abandonment of a part of the road, is by an action to vacate the charter, or dissolve the company (People *v.* Albany & Vermont R. Co., 24 N. Y. 261). Thus it cannot be compelled, at the suit of the attorney-general, on behalf of the People of the State, to re-open and operate such abandoned portion of its road (*Id*).

Provision of Revised Statutes as to forfeiture, when not applicable. — The seventh section of title third, chapter eighteenth of the first part of the Revised Statutes shall not be so construed as to apply to any act for incorporating a railroad company, which has or shall have, in its own provisions, the terms and the time in which it shall be forfeited for non-user. (Laws 1846, chap. 155, § 1.)

The seventh section of title three, chapter eighteen, of the first part of the Revised Statutes, which provides that if the company shall not organize and commence the transaction of its business within one year from the date of its incorporation, its corporate powers are to cease, is expressly rendered non-applicable to companies organized under the general railroad act (Laws 1850, chap. 140, § 1).

Charter subject to alteration, suspension and repeal.—The charter of every corporation, that shall hereafter be granted by the legislature (*a*), shall be subject to alteration (*b*), suspension, and repeal in the discretion of the legislature. (1 Rev. Stat. 600, § 8. See also N. Y. Const. art. 8, § 1.)

(*a*) **Its constitutionality.** A provision in the charter, reserving to the Legislature the power to amend or repeal it, is not unconstitutional, or void, as repugnant to the grant. It is only a limitation and not a repugnant condition (McLaren *v.* Pennington, 1 Paige, 102; Buffalo &c. R. Co. *v.* City of Buffalo, 5 Hill, 209). And where the charter contains no such reservation, but is granted subsequent to the operation of the above section of the Revised Statutes, it may nevertheless be altered, suspended, or repealed by virtue of these provisions (Suydam *v.* Moore, 8 Barb. 358). Where the right of repeal is reserved to the legislature, it will not be presumed that such right was improperly exercised (McLauren *v.* Pennington, *supra*); but *it seems*, that the executive authority of a foreign government will not be presumed to have power to annul or dissolve a corporation, without legislative or judicial sanction or approval (Lea *v.* American &c. Canal Co., 3 Abb. Pr. N. S. 1).

(*b*) **Amendment to charter.** The legislature can amend the charter of the corporation, but if the amendment go further than matters of police, and those duties which immediately affect the public, the corporation may decline to accept it (Troy & Rutland R. Co. *v.* Kerr, 17 Barb. 581). Whether, and when, the charter may be declared forfeited by such non-compliance or non-acceptance, are other questions (*Id*). Thus the charter cannot be amended in such a manner as to change the purpose for which the company was incorporated—as, from the establishment of a railroad to that of a steamboat line (Hartford & N. H. R. Co. *v.* Croswell, 5 Hill, 383; commented on as an extreme case, Schenectady &c. Plankroad Co. *v.* Thatcher, 11 N. Y. 102; and doubted, Buffalo &c. R. Co. *v.* Dudley, 14 N. Y. 336; see also remarks of the court in White *v.* Syracuse &c. R. Co., 14 Barb. 559; Troy & Rutland R. Co. *v.* Kerr, *supra*); but an amendment of the charter not prejudicial to the stockholders, does not impair the force of the subscription, so as to relieve such stockholders as were not consulted with reference to the amendment, or did not consent to the same, from payment of calls (Northern R. Co. *v.* Miller, 10 Barb. 260; Troy & Rutland R. Co. *v.* Kerr, *supra*; White *v.* Syracuse &c. R. Co., *supra*). Under such power reserved to the legislature, each stockholder holds his stock subject to such liability as may attach to him in consequence of an alteration of the charter (Bailey *v.* Hollister, 26 N. Y. 112). Where the corporation intends applying for an

alteration, amendment, or extension of its charter, it must cause a notice of such application to be published in the State paper, and also in a newspaper printed in the county (*sic*) in which the corporation has been established (1 Rev. Stat. 156, § 2), and such notice shall state specifically the alteration intended to be applied for (*Id.* § 4).

Dissolution.—The legislature may at any time annul or dissolve any incorporation formed under this act; but such dissolution shall not take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred. (Laws 1850, chap. 140, § 48.)

Where a corporation was dissolved by a decree of the State, and a subsequent decree contained a complete recognition of the corporation as existing, and by a new name: *Held*, that the latter decree should be considered as reviving the corporation under its old charter, and subject, though under a new name, to its debts and liabilities incurred under the old name (Lea *v.* American &c. Canal Co., 3 Abb. Pr. N. S. 1). So, where the corporation had terminated its existence through non-user, it was *held* revived by a statute extending the time for the performance of the act, in which default had been made, and further amending and repealing portions of the charter (Crocker *v.* Crane, 21 Wend. 211). The Code of Procedure provides, that "An action may be brought by the attorney-general, in the name of the people of this State, whenever the legislature shall so direct, against a corporation, for the purpose of vacating or annulling the act of incorporation, or an act renewing its corporate existence, on the ground that such act or renewal was procured upon some fraudulent suggestion or concealment of a material fact, by the persons incorporated, or by some of them, or with their knowledge and consent (Code, § 429). The Code further provides, that the attorney-general, upon leave granted by the Supreme Court or a judge thereof (Code, § 431), shall bring an action, in the name of the people of the State, against a corporation—other than municipal—for the purpose of dissolving it, whenever it shall (1) Offend against any of the provisions of the act or acts creating, altering, or renewing such corporation; (2) Violating the provisions of any law by which such corporation shall have forfeited its charter by abuse of its powers; (3) Whenever it shall have forfeited its privilege or franchises by failure to exercise its powers; (4) Whenever it shall have done or omitted any act which amounts to a surrender of its corporate rights, privileges, and franchises; or (5) Whenever it shall exercise a franchise or privilege not conferred upon it by law (Code, § 430). The statute provides that the corporation shall be

deemed to have surrendered its charter whenever it shall have remained insolvent; or neglected or refused to pay its debts; or suspended its ordinary and lawful business for one whole year (1 Rev. Stat. 603, § 4; 2 *id.* 463, § 38). Such provisions, however, are mere defeasances, and the corporation continues in existence until judicially dissolved (People *v.* Manhattan Co., 9 Wend. 351; Matter of Ref. Presb. Church of N. Y., 7 How. Pr. 476; Caryl *v.* McElrath, 3 Sandf. 176). So an unauthorized lease and transfer of the whole road during the continuance of the charter, does not *ipso facto* dissolve the corporation (Troy & Rutland R. Co. *v.* Kerr, 17 Barb. 581); since the forfeiture can only be taken advantage of in proceedings to dissolve the company (Towar *v.* Hale, 46 Barb. 361). An action to vacate the charter, or dissolve the corporation, is the only remedy for non-user or abandonment of a portion of its road (People *v.* Albany & Vermont R. Co., 24 N. Y. 261). Where, in proceedings by the people for such purpose, none of the material allegations of the complaint are denied by the answer, although the alleged forfeiture is attempted to be excused: *Held*, that the fact of insolvency and suspension of business being admitted by the answer, no explanation could be available or admissible to excuse the forfeiture. On such pleadings the plaintiff may apply at special term for judgment of forfeiture and the appointment of a receiver (People *v.* Northern R. Co., 42 N. Y. 217; affirming s. c. 53 Barb. 98). The provisions of the Revised Statutes (2 Rev. Stat. 463, §§ 36, 37), with respect to the sequestration of the corporate property and the appointment of a receiver, on the application of a judgment creditor, upon the return of the execution unsatisfied, do not necessarily dissolve the corporation. They may cause a suspension of business, which might render the company liable to be dissolved under section thirty-eight (*Id.* § 38; see *supra*), but such consequence by no means invariably follows (Mann *v.* Pentz, 3 N. Y. 415). No stockholder can obtain a preliminary injunction in a suit against the company, and have a receiver appointed with full authority over the corporation, and thereby work its dissolution, unless it be insolvent (Howe *v.* Deuel, 43 Barb. 504), nor can an illusory suit be brought in the stockholder's name, but in the interest of a rival company, for the purpose of dissolving the corporation (Waterbury *v.* Merchants' Union Exp. Co., 50 Barb. 157; s. c. 3 Abb. Pr. N. S. 163). Upon the dissolution of the company, unless other persons are appointed by the legislature, the directors are to be the trustees of the creditors and stockholders (1 Rev. Stat. 600, § 9); but the repealing law may appoint trustees to close the affairs of the corporation (McLaren *v.* Pennington, 1 Paige, 102). There are but two ways under the laws of this State by which the dissolution of a corporation can be affected by the voluntary action of its members. The one is by a formal surrender of its corporate rights to, and acceptance of the same, by the State; and the other, by a petition to the Supreme Court (N. Y. Marbled Iron Works *v.* Smith, 4 Duer, 362), as provided by the statute, as follows: "Whenever the directors, trustees, or other officers having the manage-

ment of the concerns of any corporation, or the majority of them, shall discover that the stock, property and effects of such corporation have been so far reduced by losses or otherwise, that it will not be able to pay all just demands to which it may be liable, or to afford a reasonable security to those who may deal with such corporation, or whenever such directors, trustees or officers, or a majority of them, shall, for any reason, deem it beneficial to the interests of the stockholders that such corporation should be dissolved, they may apply to the court of chancery, by petition, for a decree dissolving such corporation, pursuant to the provisions of this article" (2 Rev. Stat. 467, § 58). The statute provides what the contents and form of the petition shall be (*Id.* §§ 59, 60). Upon such petition the order to show cause is granted *ex-parte* (*Id.* 468, § 61); and notice of the contents of such order is to be published (*Id.* § 62). The proceedings before the referee (*Id.* §§ 63, 64); the dissolution of the corporation and the appointment of a receiver (*Id.* § 65); who may be eligible to such office (*Id.* § 66); the rights and duties of the receiver (*Id.* 469, §§ 67–78; 472, § 85); the dividends (*Id.* 470, §§ 79–84), and the accounting of such receivers (*Id.* 472, §§ 86–89), are also regulated by the statute. No mere resolution of the corporators, even though unanimous, can dissolve the corporation (N. Y. Marbled Iron Works *v.* Smith, *supra*).

IV.

OF THE CAPITAL STOCK; AND HEREIN OF ITS INCREASE.

The stock.—The stock of every company formed under this act shall be deemed personal estate (*a*), and shall be transferable in the manner prescribed by the by-laws of the company (*b*), but no shares shall be transferable until all previous calls thereon shall have been fully paid in (*c*); and it shall not be lawful for such company to use any of its funds in the purchase of any stock in its own, or in any other corporation (*d*). (Laws 1850, chap. 140, § 8.)

(*a*) **Stock deemed personal estate.** Such a clause has reference not to the nature of the property held by the corporation for the benefit of its stockholders, but rather to that which the stockholders themselves have in the company (Mohawk & Hudson R. Co. *v.* Clute, 4 Paige, 384).

(*b*) **Transfer of stock.** Under a provision, requiring the certificate of stock to be delivered up before the transfer shall be made, it is the duty of the company, upon the surrender of such certificate, to make the transfer; and in case of refusal, it is liable in damages to the full value of the stock (Commercial Bank of Buffalo *v.* Kortright, 22 Wend. 348; affirming s. c. *sub nom.* Kortright *v.* Buffalo Commercial Bank, 20 *id.* 91); but a provision that the shares of stock shall be transferable only on the books of the company, contained in the by-laws (Gilbert *v.* Manchester Iron Co. 11 Weud. 627); or in the charter (Bank of Utica *v.* Smalley, 2 Cow. 770; s. c. affirmed, 8 *id.* 398; Commercial Bank of Buffalo *v.* Kortright, *supra*), is intended merely for the protection of the company; and a requirement of the by-laws that the stock certificate must be surrendered before the transfer shall be made, is not binding on a third party so as to affect his rights or deprive him of his property (N. Y. & N. H. R. Co. *v.* Schuyler, 34 N. Y. 30; affirming s. c. 38 Barb. 534). Thus a transfer of stock on the books of the company, to a *bonâ fide* purchaser for value, vests the title in the latter,

even though the transferror's certificate should be outstanding and not delivered up to be cancelled at the time (*Id*). Nor will the transferee's title to the stock be affected by the fact that the outstanding certificate had been pledged to a third person as security for moneys advanced thereon, without notice to the company (*Id*). Such pledgee, however, has a remedy against the company for allowing the transfer to be made without requiring the certificate of stock to be surrendered (*Id*). A transfer from one, holding no shares of stock on the company's books, passes no title (*Id*); nor conveys any title to subsequently acquired stock (*Id*). But, where, however, it appears from the transactions that the stock was received and transferred, on the same day, it will be deemed by a court of equity, until the contrary is established, to have been received before it was transferred (*Id*). As to the rights of a party receiving from the owner, as security for money borrowed by the latter, a stock certificate, with a transfer endorsed thereon, and power of attorney to transfer the same, they are purely equitable. He can compel a transfer of such stock on the books of the company, only while it stands in the pledgor's name (*Id*). As between the seller and himself, he has the entire title; as between the company and himself, he holds the equitable title which may ripen into a legal title on transfer being made (*Id*). One claiming, however, under transfer by endorsement in blank, must prove consideration (Dunn *v.* Commercial Bank of Buffalo, 11 Barb. 580, citing cases, and explaining Commercial Bank of Buffalo *v.* Kortright, 22 Wend. 348); though such holder is presumptively the equitable owner (Leavitt *v.* Fisher, 4 Duer, 1); and may fill the blanks with his own name and perfect the transfer (*Id.*; Fatman *v.* Lobach, 1 *id.* 354); but until filling the blanks with his own name, he cannot recover of the company, for not transferring the stock and issuing the certificate to him (Commercial Bank of Buffalo *v.* Kortright, *supra*). Where the company, upon a forged power of attorney, transferred the plaintiff's stock, cancelling the certificates and issuing new ones, it must make good the plaintiff's loss, either by the transfer of an equal quantity of stock, or by payment of its value (Pollock *v.* National Bank, 7 N. Y. 274). The title to stock held by an officer of the company, and standing in his name, with the addition of his office, on the books of the company, is not, upon his resignation and the appointment of his successor, vested in the latter without a regular assignment or transfer (Matter of the Mohawk &c. R. Co. 19 Wend. 135). The sale of stocks on time, is legalized by the laws of 1858 (Laws 1858, chap. 134, § 1).

(*c*) **Stock shall not be transferred, when.** Where the charter declares, that no transfer of the stock should be made, while the same remained unpaid for, the assignee of the stock certificate, without a transfer on the corporate books, takes it subject to the equity of the company (Stebbins *v.* Phenix Fire Ins. Co. 3 Paige, 350); and is not entitled to require the company to transfer the stock, except on terms of his satisfying the indebtedness (McCready *v.* Rumsey, 6 Duer, 574).

He must be regarded as succeeding simply to the rights and equities of his assignor (Mechanics' Bank *v.* N. Y. & N. H. R. Co. 13 N. Y., 599; M'Cready *v.* Rumsey, *supra*).

(*d*) **Company cannot purchase stock.** Where the corporation is prohibited from purchasing stock, its agreement to do so, is void as against public policy (Barton *v.* Plankroad Co., 17 Barb. 397).

Subsequent subscription to capital stock.—When such articles of association and affidavit are filed and recorded in the office of the secretary of state, the directors named in said articles of association may, in case the whole of the capital stock is not before subscribed, open books of subscription to fill up the capital stock of the company, in such places and after giving such notice as they may deem expedient, and may continue to receive subscriptions until the whole capital stock is subscribed (*a*). At the time of subscribing every subscriber shall pay to the directors ten per cent on the amount subscribed by him, in money (*b*); and no subscription shall be received or taken without such payment. (Laws 1850, chap. 140, § 4.)

(*a*) **Books of subscription.** Those who subscribe to the capital stock of the company, in the books opened to receive such subscriptions, become stockholders in the company to the same extent as those who have subscribed to the articles of association (Troy & Boston R. Co. *v.* Tibbits, 18 Barb. 297; Ogdensburgh &c. R. Co. *v.* Frost, 21 Barb. 541; Erie & N. Y. City R. Co. *v.* Owen, 32 Barb. 616); nor will the use of subscription papers instead of "books," as required by the statute, invalidate the subscription (Hamilton &c. Plankroad Co. *v.* Rice, 7 Barb. 157). In case, however, the whole of the capital stock is previously subscribed for and taken, no one can become a stockholder by inscribing his name with a certain number of shares thereto annexed, on the books of the company (Lathrop *v.* Kneeland, 46 Barb. 432); nor can the company issue valid certificates for stock subscribed in excess of the limit (Mechanics' Bank *v.* N. Y. & N. H. R. Co., 13 N. Y. 599).

(*b*) **Payment of ten per cent on amount subscribed.** The intent of the section is, that no subscription shall be valid until the

payment of ten per cent of the amount subscribed; and not, that it shall be void, if a short interval elapse between the time of subscription and the payment of the money (Black River & Utica R. Co. *v.* Clarke, 25 N. Y. 208; Same *v.* Barnard, 31 Barb. 258; Beach *v.* Smith, 30 N. Y. 116; Same *v.* Same, 28 Barb. 254; Ogdensburgh &c. R. Co. *v.* Wolley, 1 Keyes, 118; s. c. 34 How. Pr. 54). Thus, by a payment subsequent to the subscription, the party making it will be deemed to have waived the condition, and will be liable as a stockholder on his subscription (Ogdensburgh &c. Co. *v.* Wolley, *supra*). So where he gave his notes for the ten per cent of his subscription, and at maturity the note was paid, the subscription was thereby made valid (*Id*); and where he did not, at the time of subscribing for the stock, pay the ten per cent referred to, but subsequently paid forty per cent thereon, it was held that the subscription was rendered obligatory (Black River & Utica R. Co. *v.* Clarke, *supra*; Same *v.* Barnard, *supra*). So, where the subscription was made upon the understanding that the ten per cent should be paid in services rendered to the company, and subsequently the defendant presented an account, charging for such services, and crediting the ten per cent, and the balance was paid him by the company, it was deemed a sufficient payment of ten per cent, to make him liable on his subscription (Beach *v.* Smith, *supra*). In the absence of such statutory restriction, the company may receive payment of such subscription otherwise than in money (East N. Y. &c. R. Co. *v.* Lightall, 5 Abb. Pr. N. S. 458; s. c. 6 Robt. 407). The provisions of this section are not applicable to subscriptions made under section one, before incorporation (Lake Ontario &c. R. Co. *v.* Mason, 16 N. Y. 451; Ogdensburgh &c. R. Co. *v.* Frost, 21 Barb. 541).

Non-payment of stock.—The directors may require the subscribers to the capital stock of the company to pay the amount by them respectively subscribed, in such manner and in such installments as they may deem proper (*a*). If any stockholder shall neglect to pay any installment as required by a resolution of the board of directors, the said board shall be authorized to declare his stock, and all previous payments thereon, forfeited for the use of the company; but they shall not declare it so forfeited, until they shall have caused a notice in writing to be served on him personally, or by depositing the same in the post-office, properly directed to him at the post-office nearest his usual place of residence, stating that

he is required to make such payment at the time and place specified in said notice; and that if he fails to make the same, his stock, and all previous payments thereon, will be forfeited for the use of the company; which notice shall be served as aforesaid, at least sixty days previous to the day on which such payment is required to be made (*b*). (Laws 1850, chap. 140, § 7.)

(*a*) **Remedy by action.** The existence of the authority to declare a forfeiture and sequestration of the stock and previous payments made thereon, being merely a cumulative remedy, affords no objection to an action at law to enforce the payment of calls (Buffalo & N. Y. City R. Co. *v.* Dudley, 14 N. Y. 336; Troy Turnpike & Railroad Co. *v.* McChesney, 21 Wend. 296; Ogdensburgh &c. R. Co. *v.* Frost, 21 Barb. 541; Troy & Boston R. Co. *v.* Tibbits, 18 *id.* 297; Northern R. Co. *v.* Miller, 10 *id.* 260; Troy & Rutland R. Co. *v.* Kerr, 17 Barb. 581. See also Mann *v.* Currie, 2 Barb. 294; Rensselaer &c. Plankroad Co. *v.* Barton, 16 N. Y. 457, *note;* Dutchess &c. M'f'g Co. *v.* Davis, 14 Johns. 238). The debt, which the subscription creates, being entire, the calls made by the company simply declare the time and installments in which the debt shall be paid (Small *v.* Herkimer M'f'g Co. 2 N. Y. 330). Notice to a delinquent subscriber to pay his subscription is not necessary to support an action for calls (Lake Ontario &c. R. Co. *v.* Mason, 16 N. Y. 451); nor in such an action, where no excess of subscription is shown, is it necessary to prove that the number of shares subscribed for by the defendant, had been actually allotted to him, the presumption being that the subscription books were closed as soon as the whole amount of stock had been subscribed for (Buffalo & N. Y. City R. Co. *v.* Dudley, *supra*); and a misstatement of the length of the road, where there is no pretence of fraud, or negligence in such statement (Troy & Rutland R. Co. *v.* Kerr, *supra*); or a mere neglect to make the whole of the road specified in the articles of association, even without legislative sanction (*Id*); or, in general, an amendment to the charter, though the stockholder was not consulted (*Id.;* Northern R. Co. *v.* Miller, 10 Barb. 260; White *v.* Syracuse &c. R. Co. 14 *id.* 559; Buffalo & N. Y. City R. Co. *v.* Dudley, *supra;* commenting on Hartford & N. H. R. Co. *v.* Croswell, 5 Hill, 383, where it was held that the charter could not be amended to change the *purposes* of organization); or a fraudulent statement by one of the officers, at a public meeting, and in the presence of a majority of the directors, but made without authority (Buffalo & N. Y. City R. Co. *v.* Dudley, *supra*); or the fact that the whole amount of capital stock has not been subscribed for (Rensselaer &c. Plankroad Co. *v.* Wet-

sel, 21 Barb. 56), constitutes no defence to such action. But whether a subscriber is liable for calls, when, in the interval, between notice of calls and the time for the payment thereof, he has transferred his stock to a solvent party, is to be determined from the statute and his agreement (Schenectady &c. Plankroad Co. *v.* Thatcher, 11 N. Y. 102). Where the company recovered only a part of the unpaid subscription, the balance being barred by the statute of limitations: *Held*, that upon payment of the amount recovered, the subscriber was entitled to a certificate of the stock (Johnson *v.* Albany & Susquehanna R. Co. 40 How. Pr. 193).

(*b*) **Remedy by forfeiture.** Where the directors agree to forfeit, they take back the stock, and retain all previous payments, but they cannot sue even for installments which became due before the forfeiture was declared. The provision is rather in the nature of a conditional sale, than a mortgage to secure the whole subscription (Small *v.* Herkimer M'f'g Co. 2 N. Y. 330). A general resolution, forfeiting stock, is void unless it specifies the stock forfeited (Johnson *v.* Albany & Susquehanna R. Co. 49 How. Pr. 193). Upon forfeiture, the stock becomes the absolute property of the company, and may be sold at its value, and a proper stock certificate issued to such purchaser, without any re-subscription (*Id.;* City Bank of Columbus *v.* Bruce, 17 N. Y. 507; Otter *v.* Brevoort Petroleum Co. 50 Barb. 247; People *v.* Albany & Susquehanna R. Co. 55 Barb. 344; s. c. 1 Lans. 308; s. c. 7 Abb. Pr. N. S. 265; s. c. 38 How. Pr. 228). The provisions of the last sentence of this section must be limited exclusively to proceedings to forfeit the stock of delinquent subscribers, and are inapplicable to an action for calls (Lake Ontario &c. R. Co. *v.* Mason, 16 N. Y. 451).

Increase of stock.—In case the capital stock of any company, formed under this act, is found to be insufficient for constructing and operating its road, such company may, with the concurrence of two-thirds in amount of all its stockholders, increase its capital stock from time to time, to any amount required for the purposes aforesaid. Such increase must be sanctioned by a vote in person, or by proxy, of two-thirds in amount of all the stockholders of the company, at a meeting of such stockholders, called by the directors of the company for that purpose, by a notice in writing to each stockholder, to be served on him personally, or by depositing the same, properly

folded and directed to him, at the post-office nearest his usual place of residence, in the post-office, at least twenty days prior to such meeting. Such notice must state the time and place of the meeting, and its object, and the amount to which it is proposed to increase the capital stock. The proceedings of such meeting must be entered on the minutes of the proceedings of the company, and thereupon the capital stock of the company may be increased to the amount sanctioned by a vote of two-thirds in amount of all the stockholders of the company as aforesaid. (Laws 1850, chap. 140, § 9.)

Reduction of capital stock. The capital stock of the company, whenever the articles of association are altered and amended in such manner that the road terminates at a point of intersection with another railroad (Laws 1851, chap. 19, § 1; Laws 1854, chap. 282, § 13); or upon the location in an adjoining State, of part of the line, previously located in this State (Laws 1851, chap. 19, § 2), may be reduced to an amount not less than $10,000 for every mile of its railroad actually constructed in this State.

Unauthorized issue of stock.—Every officer and agent of every incorporated company, joint-stock company or corporation, formed or existing under or by virtue of the laws of any of the United States, who shall, within this State knowingly, willfully and designedly sign, or procure to be signed, with intent to issue, sell or pledge, or cause to be issued, sold or pledged, or who shall knowingly, willfully and designedly issue, sell or pledge, or cause to be issued, sold or pledged any certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such incorporated company, joint-stock company or corporation, or any bond or evidence of debt of such incorporated company, joint-stock company or corporation, or any instrument

purporting to be a certificate or other evidence of ownership or transfer of such share or shares, or purporting to be such bond or evidence of debt, without being thereunto first authorized and empowered by such incorporated company, joint-stock company or corporation, and every such officer and agent, who shall re-issue, sell, pledge or dispose of, or cause to be reissued, sold, pledged or disposed of, any surrendered or cancelled certificate or other evidence of the ownership or transfer of any such share or shares, or of any right or interest therein, with the intent of defrauding any such corporation or any person or persons, shall be deemed guilty of a felony, and shall be punished by a fine not exceeding three thousand dollars, and imprisonment in the State prison not less than three nor more than seven years. (Laws 1855, chap. 155, § 2.)

Stock fraudulently issued.—Every officer and every agent of any incorporated company or corporation, formed or existing under or by virtue of the laws of any of the United States, who shall within this State, willfully and designedly sign, or procure to be signed with intent to issue, sell or pledge, or cause to be issued, sold or pledged, or shall willfully and designedly issue, sell or pledge, or cause to be issued, sold or pledged, any false or fraudulent certificate, or other evidence of the ownership or transfer of any share or shares of the capital stock of such incorporated company or corporation, or any false or fraudulent bond, or evidence of debt of such incorporated company or corporation, or any certificate or other evidence of the ownership or transfer of any share or shares of such incorporated company or corporation, or any instrument purporting to be a certificate or other

evidence of ownership or transfer of such share or shares, or purporting to be such bond or evidence of debt, the signing, issuing, selling or pledging of which shall not be authorized by the charter and by-laws of such incorporated company or incorporation, or some amendment thereof, shall be deemed guilty of a felony, and shall be punished by a fine not exceeding three thousand dollars, and imprisonment in the State prison for a term not less than three nor more than seven years. (Laws 1855, chap. 155, § 1.)

The officers of a corporation, authorized to issue certificates to the stockholders as evidence of title to stock, are liable for the issue of spurious stock, falsely and fraudulently certified by them, not only to the parties to whom it was issued, but also to persons who have subsequently purchased the same in good faith (Cazeaux *v.* Mali, 25 Barb. 578; s. c. *sub. nom.* Mead *v.* Mali, 15 How. Pr. 347; Shotwell *v.* Mali, 38 Barb. 445; Bruff *v.* Mali, 36 N. Y. 200; s. c. 34 How. Pr. 338), and also to a stockholder of the company, for the damage sustained by him, by reason of the depreciation in the market value of the stock resulting from the disclosure of the over issue (Cazeaux *v.* Mali, *supra;* Bell *v.* Mali, 11 How. Pr. 254; Wells *v.* Jewett, *id.* 242; Crook *v.* Jewett, 12 *id.* 19). No valid certificate can be issued in excess of the limit fixed by the charter for the capital stock (Mechanics' Bank *v.* N. Y. & N. H. R. Co., 13 N. Y. 599), and the company can maintain an action against all persons claiming stock under the spurious issue, to have the certificates representing such issue declared void (N. Y. & N. H. R. Co. *v.* Schuyler, 17 N. Y. 592; s. c. 7 Abb. Pr. 41; reversing s. c. 1 Abb. Pr. 417; Same *v.* Same, 34 N. Y. 30; affirming s. c. 38 Barb. 534). Drawing a certificate and mailing it to a stockholder must be considered "issuing" it (Jones *v.* Terre Haute &c. R. Co., 17 How. Pr. 529).

V.

OF THE STOCKHOLDERS; AND HEREIN OF THEIR LIABILITY.

Who deemed stockholders.—No person holding stock in any such company, as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholders of such company; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estates and funds in the hands of such executor, administrator, guardian or trustee, shall be liable in like manner, and to the same extent, as the testator, or intestate, or the ward or person interested in such trust fund would have been, if he had been living and competent to act, and held the same stock in his own name. (Laws 1850, chap. 140, § 11.)

So long as a subscriber stands in such a relation to the company, that the latter can compel him to pay for his stock, he must be regarded as a stockholder, within the provisions of an act making stockholders individually liable for the corporate debts; and this, although such subscriber has paid nothing on his subscription, and received no certificate of stock (Spear *v.* Crawford, 14 Wend. 20). Nor is his liability affected by the fact that one half of the stock subscribed for in his name, was, under an oral agreement, to be owned and paid for, by another party. He is liable to the full extent of the act, but is entitled upon payment to recover half of the same from his co-owner (Stover *v.* Flack, 30 N. Y. 64, affirming s. c. 41 Barb. 162). His name appearing as stockholder on the corporate books, is presumptive evidence of the existence of such relationship between himself and the company, and the burden of proving the contrary is thrown upon him (Hoagland *v.* Bell, 36 Barb. 57). So the stock subscription paper signed by him, is relevant upon such question

(Partridge *v.* Badger, 25 Barb. 146); but one stockholder is not a competent witness to prove the defendant to be another stockholder, in order to charge him with the statutory liability for the debts of the company (Pierce *v.* Kearney, 5 Hill, 82). Stock standing in the name of a fictitious person is liable for the debt of the true owner (Stebbins *v.* Phenix Fire Ins. Co., 3 Paige, 350). The members of a corporation are competent witnesses for or against the company (2 Rev. Stat. 407, § 81; Matter of Kip, 1 Paige, 601; Wright *v.* N. Y. Cent. R. Co., 28 Barb. 80). They are not parties to the action, or persons for whose immediate benefit the action is prosecuted, within the meaning of § 399 of the Code of Procedure, excusing parties from testifying (N. Y. & Erie R. Co. *v.* Cook, 2 Sandf. 732; matter of Kip, *supra;* Montgomery Co. Bank *v.* Marsh, 7 N. Y. 481, affirming s. c. 11 Barb. 645; Washington Bank of Westerly *v.* Palmer, 2 Sandf. 686). The stockholders at the time a dividend is declared are entitled to the same (Currie *v.* White, 37 How. Pr. 330; s. c. 6 Abb. Pr. N. S. 352; Jones *v.* Terre Haute &c. R. Co. 17 How. Pr. 529), but no stockholder can compel the company to declare and pay a dividend from funds on hand (Karnes *v.* Rochester &c. R. Co., 4 Abb. Pr. N. S. 107); nor can he interfere to prevent a proper dividend (Carpenter *v.* N. Y. & N. H. R. Co., 5 Abb. Pr. 277); nor, where the company has power to increase its capital, can he enjoin the directors from issuing new stock in lieu of a dividend (Howell *v.* Chicago &c. R. Co., 51 Barb. 378), though he may enjoin the payment of a dividend where spurious stock has been issued, until it may be established who are the genuine stockholders (Underwood *v.* N. Y. & N. H. R. Co., 17 How. Pr. 537).

Stockholders' liability.—Each stockholder of any company formed under this act shall be individually liable to the creditors of such company, to an amount equal to the amount unpaid on the stock held by him, for all the debts and liabilities of such company, until the whole amount of the capital stock so held by him shall have been paid to the company (*a*), and all the stockholders of any such company shall be jointly and severally liable for the debts due or owing to any of its laborers and servants, other than contractors, for personal services for thirty days' service performed for such company (*b*), but shall not be liable to an action therefor before an execution shall be returned unsatisfied, in whole or in part, against the

corporation (*c*), and the amount due on such executions shall be the amount recoverable with costs against such stockholders; before such laborer or servant shall charge such stockholder for such thirty days' services, he shall give him notice in writing, within twenty days after the performance of such service, that he intends so to hold him liable, and shall commence such action therefor within thirty days after the return of such execution, unsatisfied, as above mentioned; and every such stockholder, against whom any such recovery by such laborer or servant shall have been had, shall have a right to recover the same of the other stockholders in said corporation, in ratable proportion to the amount of the stock they shall respectively hold with himself (*d*); and all laws whereby the stockholders, officers and agents of any railroad corporation are made individually liable for the debts or liabilities of such corporation, beyond the provisions contained in the act entitled, "An Act to authorize the formation of railroad corporations, and to regulate the same," passed April 2, 1850, and the acts amending the same, are hereby repealed (*e*). (Laws 1850, chap. 140, § 10; Am'd Laws 1854, chap. 282, § 16.)

(*a*) **Liability to Creditors.** "Where the whole capital of a corporation shall not have been paid in, and the capital paid, shall be insufficient to satisfy the claims of its creditors, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter of the company, or such proportion of that sum as shall be required to satisfy the debts of the company" (1 Rev. Stat., 600, § 5). This provision of the Revised Statues is made directly applicable to railroad companies, by the express reference thereto, contained in section one of the general railroad act. The creditor or his representative may, after his judgment against the company is returned unsatisfied in whole or in part, apply to the Supreme Court to sequestrate the stock, property, things in action, and effects of such corporation, and to appoint a receiver of the same (2 Rev. Stat. 463, § 36). The cases in which a receiver may be appointed, and the manner of appointment, are regulated by the laws of 1870 (Laws

1870, chap. 151, § 3. See also Galwey *v.* U. S. Steam Refining Company, 36 Barb. 256; affirming s. c. 13 Abb. Pr. 211; Ramsey *v.* Erie R. Co., 7 Abb. Pr. N. S. 156). But a creditor cannot bring an action under this clause of the section, to enforce the stockholder's liability, subsequent to the appointment of a receiver, and the entry of an order restraining creditors from proceeding against the company. Upon the appointment of the receiver, the right of action for unpaid subscriptions is vested in him (Rankine *v.* Elliott, 16 N. Y. 377; affirming s. c. 14 How. Pr. 339).

(*b*) **Liability to Laborers.** The stockholder is liable, under the above provision, for debts due from the company to its *immediate* laborers, employés, and servants. His liability to laborers employed by a contractor in constructing the road, is provided for by section twelve of the same act (Gallaghar *v.* Ashby, 26 Barb. 143). The relief of such a class of manual laborers is contemplated, as usually work for a small compensation, who are generally indifferently qualified to look after their own affairs, and to whom the prompt payment of their wages is a matter of necessity (Boutwell *v.* Townsend, 37 Barb. 205; Aikin *v.* Wasson, 24 N. Y., 482; Coffin *v.* Reynolds, 37 *id.* 640). Thus the language used, must be construed to exclude those persons employed in the service of the company, who are differently and properly designated, such as *officers* and *agents* (Conant *v.* Van Schaick, 24 Barb. 87). So the *secretary* (Coffin *v.* Reynolds, *supra*); or a *contractor* (Aikin *v.* Wasson, *supra*; Boutwell *v.* Townsend, *supra*); or a *consulting engineer* is not a servant within the statute (Ericsson *v.* Brown, 38 Barb. 390). The complaint in such an action against the stockholder must allege specifically that the plaintiff or his assignor, was a servant or laborer of the company, and that the claim accrued to him in that capacity (Boutwell *v.* Townsend, *supra*); and a demurrer to the complaint will be sustained, where it is merely set forth that the plaintiff performed work and labor for the company (*Id*); since no cause of action is established unless the party seeking to recover brings his case clearly within the statute (Coffin *v.* Reynolds, *supra*). In such an action the plaintiff must prove the existence of the company; his recovery of a judgment against it; his execution returned unsatisfied; his claim for services, and that the defendants were stockholders (Strong *v.* Wheaton, 38 Barb. 616; Conant *v.* Van Schaick, *supra*).

(*c*) **Remedy against Company, first to be exhausted.** In consulting the numerous cases adjudicating the stockholders' liability to creditors, care should be taken in noting under what particular act such cases arise. Many of the general laws providing for the formation of corporations explicitly require that the creditor shall exhaust his remedy against the corporation before he is at liberty to proceed against the stockholders, who have made default in the payment of the capital stock. The statutes providing for the formation of telegraph companies (Laws 1848, chap. 265, § 10; Laws 1853, chap. 471, § 4); ocean navigation companies (Laws 1852, chap. 228; Laws 1853, chap. 124, §§ 5, 6, 8); lake and

river navigation companies (Laws 1854, chap. 232, § 12); turnpike and plankroad companies (Laws 1847, chap. 210, §§ 44, 45, 46; Laws 1855, chap. 390, § 1); banking companies (Laws 1838, chap. 260, § 23; Laws 1849, chap. 226, § 1 *et. seq.*); joint stock companies (Laws 1849, chap. 258, § 4; Laws 1853, chap. 153); and the above section of the act for the incorporation of railroad companies are of this description. The provisions of the act for the incorporation of manufacturing, mining, mechanical chemical, agricultural, horticultural, medical or curative, mercantile or commercial companies (Laws 1848, chap. 40, §§ 10, 18, 24. See Laws, 1866, chap. 836); gas companies (Laws 1848, chap. 37, §§ 10, 15, 17); and building and loan associations (Laws 1851, chap. 122, § 11; Laws 1853, chap. 117, §§ 10, 18, 24)—in all of which the liability of stockholders is declared in substantially the same terms,—do not, in direct language, exempt the stockholder from liability, until a judgment has been obtained against the company, and execution thereon returned unsatisfied; such provisions being, that they shall not be liable unless the debt contracted by the company is to be paid within one year, or unless a suit shall be brought against the company within one year after the debt becomes due. Yet under the construction of such language it has been held that no action will lie against the stockholder until the creditor has exhausted his remedy against the company, and that the complaint in such action must go beyond the terms of the statute, and allege judgment against the company and execution returned unsatisfied (Lindsley *v.* Simonds, 2 Abb. Pr., N. S. 69). Stockholders, however, in certain insurance companies (Laws 1849, chap. 308, §§ 19, 21; Laws 1857, chap. 28, § 6); ferry companies (Laws 1853, chap. 135, § 14); bridge companies (Laws 1848, chap. 259, § 2); guano companies (Laws 1857, chap 546, §§ 11, 18); skating park companies (Laws 1861, chap. 149, § 2); companies for improving the breed of domestic animals (Laws 1857, chap. 776, § 7); and companies for improving the breed of horses (Laws 1854, chap. 269, § 6; Laws 1860, chap. 523, § 1) are made absolutely liable without any proceedings being first taken against the company.

Where the language of the statute defers the stockholders' liability until the creditor has obtained judgment against the company and "*an execution*" returned unsatisfied, it has been *held*, that the statute was complied with when *one* execution was issued, and that this was a fair and reasonable effort to collect the judgment by execution (Maher *v.* Carman, 38 N. Y. 25); but no lien is thus created in favor of a general judgment creditor of the company, over a subsequent judgment creditor, who had in like manner exhausted his remedy against the company, but both are placed on the same footing (Rankine *v.* Elliott, 16 N. Y. 377; affirming s. c. 14 How. Pr. 339). Under such a statutory provision the stockholders are answerable to creditors of the company as original and primary debtors in the same manner as if they had been unincorporated. The remedy of the creditor against the stockholder is merely deferred until his remedy against the company is exhausted (Corning *v.* McCullough, 1 N. Y. 47, overruling Freeland *v.* McCollough, 1 Den. 414; Allen

v. Sewall, 2 Wend. 327; *Ex-parte* Van Riper, 20 *id.* 614; Moss *v.* Oakley, 2 Hill, 265; Bailey *v.* Bancker, 3 *id.* 188; Harger *v.* McCullough, 2 Den. 119; Worrall *v.* Judson, 5 Barb. 210; Abbott *v.* Aspinwall, 26 *id.* 202). It follows from this, that since the nature of the individual liability is that of partners unincorporated, the judgment creditor can sue only such stockholders as were members of the corporation when the debt was incurred (Moss *v.* Oakley, 2 Hill, 265; Judson *v.* Rossie Galena Co., 9 Paige, 598; Young *v.* N. Y. & Liverpool &c. Steamship Co., 15 Abb. Pr. 69; affirming s. c. 10 *id.* 229); and the complaint must allege that at such time the defendants were stockholders (Young *v.* N. Y. & Liverpool &c. Steamship Co., *supra*), and that judgment was obtained against the company, and execution returned unsatisfied (Lindsley *v.* Simonds, 2 Abb. Pr. N. S. 69). In such an action, the stockholder sued cannot plead as a defence an illegal act of the company, prior to the incurring of the debt (Spear *v.* Crawford, 14 Wend. 20); nor a defect in the proceedings to organize the company (Eaton *v.* Aspinwall, 19 N. Y. 119; affirming s. c. 6 Duer, 176; s. c. 3 Abb. Pr. 417; s. c. 13 How. Pr. 184; Abbott *v.* Aspinwall, 26 Barb. 202); but he may set up in his answer that the plaintiff was also a stockholder (Wait *v.* Ferguson, 14 Abb. Pr. 379). Since to determine the company's inability to pay, the debt must be put into a judgment &c, costs may be recovered of the stockholder, in addition to the original debt. That is, he is liable, not for the debt that *was*, but for the debt that *is*,—the judgment (Witherhead *v.* Allen, 28 Barb. 661, limiting Bailey *v.* Bancker, 3 Hill, 188, to the particular statute then under consideration). But, *quære*—whether a judgment against the corporation is even *prima facie* evidence of the indebtedness of the company, against the stockholder (Belmont *v.* Coleman, 21 N. Y. 96), though it has been held, that the stockholders are qualified to assist the defence, in a suit against the corporation, and in a proper case the court will relieve the company from default, and allow the stockholders to carry on the litigation (Peck *v.* N. Y. & Liverpool &c. Steamship Co., 3 Bosw. 622).

(*d*) **Contribution.** A stockholder who has been compelled to pay the debt of his corporation, may have an action for contribution against the remaining stockholders, who were originally liable with him for the same (Aspinwall *v.* Torrance, 1 Lans. 381); and where one is not only a stockholder, but also a judgment creditor of the company, to an amount exceeding his liability as such stockholder, he may bring an action against the company, its stockholders and creditors, to fix their respective rights and liabilities, and that his judgment may be set off against his liability. The complaint in such action should set forth the times when different stockholders acquired their stock; the times when the demands of the creditors who are made parties accrued, and the fact that during the times last mentioned the plaintiff was a stockholder (Geery *v.* N. Y. & Liverpool &c. Steamship Co., 12 Abb. Pr. 268).

(*e*) **Liability Restricted.** The liabilities imposed on the directors for the debts of the company, by the laws of 1845 (Laws 1845, chap. 230, § 1), were repealed by this tenth section of the general act, as amended by the laws of 1854 (Rochester *v.* Barnes, 26 Barb. 657).

Service of Process on Stockholders.—When an action shall be authorized by any law of this State, against the stockholders of any corporation or joint stock company, and any of such stockholders named as defendants, cannot, after due diligence, be found within the state, and the fact appears to the satisfaction of the court or a judge thereof, or of the county judge of the county where the trial is to be had, such court or judge may grant an order that the service be made by publication as directed, and pursuant to the provisions of section one hundred and thirty-five, of the Code of Procedure. (Laws 1859, chap. 157, § 1.)

Stockholders, how named as defendants.—In any such action against the stockholders of any corporation or joint stock company, which shall have been organized under the laws of this state, it shall be sufficient to name as defendants the persons appearing as stockholders on the stock books of said corporation or company, by the name or names there appearing; but the court in which such action is pending, may at any time before final judgment, permit the process, pleadings and proceedings in any such action, to be amended on motion of either party, by striking out the name of any deceased stockholder or the name of any person wrongfully inserted; and by inserting the proper name of the party intended or the name or names of the proper heir, executor, administrator or personal representative of any deceased party; and such amendment may be allowed by the court at any time without costs and without prejudice to the previous proceedings had in any such action. (Laws 1869, chap. 157, § 2.)

VI.

OF THE DIRECTORS; AND HEREIN OF THEIR ELECTION.

The Directors.—There shall be a board of thirteen directors of every corporation formed under this act to manage its affairs (*a*); and said directors shall be chosen annually, by a majority of the votes of the stockholders voting at such election (*b*), in such manner as may be prescribed in the by-laws of the corporation (*c*), and they may and shall continue to be directors until others are elected in their places. In the election of directors, each stockholder shall be entitled to one vote, personally or by proxy, on every share held by him thirty days previous to any such election (*d*); and vacancies in the board of directors shall be filled in such manner as shall be prescribed by the by-laws of the corporation. The inspectors of the first election of directors shall be appointed by the board of directors named in the articles of association (*e*). No person shall be a director unless he shall be a stockholder, owning stock absolutely in his own right, and qualified to vote for directors at the election at which he shall be chosen (*f*); and at every election of directors, the books and papers of such company shall be exhibited to the meeting, if a majority of the stockholders present shall require it.* (Laws 1850, chap. 140, § 5; Am'd Laws 1854, chap. 282, § 1.)

(*a*) **The Board.** "When the corporate powers of any corporation are directed by its charter to be exercised by any particular body, or

* The remainder of the section, here omitted, relates entirely to rights acquired by a purchaser of the railroad franchise. It may be found *verbatim et literatim*, under the head "Of Railroad Bonds" &c. *Vide post.*

number of persons, a majority of such body, or persons, if it be not otherwise provided in the charter, shall be a sufficient number to form a board for the transaction of business; and every decision of a majority of the persons duly assembled as such board, shall be valid as a corporate act" (1 Rev. Stat. 600, § 6). Although a board of directors, composed of a specific number, are authorized and required by the charter of a corporation to exercise the corporate powers of such company, yet the board may, by virtue of their authority to make by-laws, deputize a quorum, consisting of less than a majority of their number, to exercise such powers in their stead (Hoyt *v.* Thompson, 19 N. Y. 207); but the powers vested in the directors cannot be exercised by the stockholders (McCullough *v.* Moss, 5 Den. 567). A court of equity at the instance of certain parties (2 Rev. Stat. 463, § 35), may direct the board to hold an election to supply vacancies caused by a removal of any of their number (2 Rev. Stat. 462, § 33, subds. 4, 5); and in case all the members of such board be removed, then to report the same to the governor, who is authorized, with the consent of the senate, to fill such vacancies (*Id.* subd. 6).

Their powers and liabilities. The directors may ratify acts which are within the corporate powers, but performed by an agent beyond the scope of his authority (Hoyt *v.* Thompson, 19 N. Y. 207; Kennedy *v.* Cotton, 28 Barb. 59); and from mere acquiescence in such acts, a ratification may be inferred (*Id.*); but neither the acts nor declarations of a director, which are not authorized by some special agency relative to the subject-matter, or within the lawful exercise of his authority as such officer, bind or affect the corporation (Soper *v.* Buffalo &c. R. Co., 19 Barb. 310; Buffalo & N. Y. City R. Co. *v.* Dudley, 14 N. Y. 336). They have power, by a two-thirds vote of their whole number, at any time, to alter the route or any part of the route of the railroad (Laws 1850, chap. 140, § 23; see also Laws 1851, chap. 19, § 2); and with the consent of the canal commissioners, may lay out a new line of road for the purpose of crossing a canal on a more favorable grade (Laws 1854, chap. 282, § 17; see also Laws 1855, chap. 478, § 1). Upon neglect of a stockholder to pay installments on the stock held by him, when so required, they have power to forfeit his stock, together with all previous payments thereon, for the use of the company (Laws 1850, chap. 140, § 7). They have no power, however, to bind the company to pay to themselves a consideration for the transfer of a franchise to the company, which franchise they allege was, previous to the transfer thereof, granted to them individually (Coleman *v.* Second Ave. R. Co., 38 N. Y. 201; affirming s. c. 48 Barb. 371). And a contract for the use of undue personal influence with the directors of a corporation, is void as contrary to morality and public policy (Davison *v.* Seymour, 1 Bosw. 88). A majority of the directors may, under certain circumstances, apply to the Supreme Court for an order dissolving the corporation (2 Rev. Stat. 467, § 58), and upon the dissolution of the company by a decree of the court or otherwise, unless other persons are appointed by the legis-

lature, or by a court of competent authority, they become trustees of the creditors and stockholders of the corporation dissolved, with power to settle the affairs of the corporation, collect and pay outstanding debts, and divide among the stockholders the moneys and other property that shall remain after the payment of debts and necessary expenses (1 Rev. Stat. 600, § 9). They have authority to sue for and recover the debts and property of the dissolved corporation, by the name of the trustees of such corporation, describing it by its corporate name, and are jointly and severally liable to the creditors and stockholders of such corporation, to the extent of its property and effects that shall come into their hands (1 Rev. Stat. 601, § 10). For signing, issuing, or causing to be signed or issued any fraudulent certificate of stock, bond, or evidence of debt of the company, they shall be deemed guilty of a felony, and shall be punished by a fine not exceeding three thousand dollars, and imprisonment in the State prison for a term not less than three nor more than seven years (Laws 1855, chap. 155, § 1); and are liable as well to the subsequent as to the immediate purchaser in good faith of such spurious stock, for damages sustained thereby (Bruff *v.* Mali, 36 N. Y. 200; s. c. 34 How. Pr. 338; Cazeau *v.* Mali, 25 Barb. 578; s. c. *sub. nom.* Meade *v.* Mali, 15 How. Pr. 347; Bell *v.* Mali, 11 How. Pr. 254; Wells *v.* Jewett, *Id.* 242; Crook *v.* Jewett, 12 *id.* 19); nor is it lawful for any of the directors of a company which shall have refused payment of any evidence of debt, in specie or lawful money of the United States, to assign or transfer any of the property or choses in action of such company, to any officer or stockholder of such company, directly or indirectly, for the payment of any debt; nor is it lawful to make any transfer or assignment in contemplation of the insolvency of such company to any person or persons whatever (1 Rev. Stat. 603, § 4). Such transfers and assignments are void (*Id.;* Bowen *v.* Lease, 5 Hill, 221). The Supreme Court, in its discretion, may compel the officers, agents, or stockholders of any corporation against which proceedings have been instituted, and every person to whom it is alleged a transfer of any property or effects of the company has been made, or in whose control any such property or effects are alleged to be, to answer a bill filed to obtain a discovery of the property, the transfer, the consideration, and all the circumstances of the disposition thereof, notwithstanding such answer may expose the company to a forfeiture of its corporate rights (2 Rev. Stat. 465, § 52). Such court, on bill or petition, or at the instance of the attorney-general prosecuting in behalf of the people, or at the instance of any creditor of such corporation, or at the instance of any director, or other officer of such corporation having a general superintendence of its concerns, has jurisdiction over such directors, managers, and other trustees and officers of the corporation: (1) To compel them to account for their official conduct, in the management and disposition of the funds and property committed to their charge; (2) To decree and compel payment by them, to the corporation whom they represent, and

to its creditors, of all sums of money, and of the value of all property which they may have acquired to themselves or transferred to others, or may have lost or wasted, by any violation of their duties as such trustees; (3) To suspend any such trustee or officer from exercising his office, whenever it shall appear that he has abused his trust; (4) To remove any such trustee or officer from his office upon proof or conviction of gross misconduct; (5) To direct new elections to be held by the body or board duly authorized for that purpose, to supply vacancies created by such removal; (6) In case there be no such body or board, or all the members of such board be removed, then to report the same to the governor, who shall be authorized, with the consent of the senate, to fill such vacancies; (7) To set aside all alienations of property made by the trustees or other officers of any corporation, contrary to the provisions of law, or for purposes foreign to the lawful business and objects of such corporation, in cases where the person receiving such alienation knew the purpose for which the same was made; and (8) To restrain and prevent any such alienations, in cases where it may be threatened, or there may be good reason to apprehend it will be made (2 Rev. Stat. 462, 463, §§ 33, 35). They may be enjoined by the Supreme Court, at the instance of the attorney-general, from exercising any corporate rights, privileges, or franchises not granted to them by any law of this State (2 Rev. Stat. 462, § 31); but an injunction to restrain the officers of the company from doing any act in violation of its charter, or misapplying the funds of the company, must be directed against such specific act, and not to enjoin them from carrying on the legitimate business of the corporation (People *v.* Albany & Susquehanna R. Co., 55 Barb. 344; s. c. 1 Lans. 308; s. c. 7 Abb. Pr. N. S. 265; s. c. 38 How. Pr. 228; Howe *v.* Deuel, 43 Barb. 504). Thus the directors of a company which has earned a surplus, cannot be enjoined from issuing new stock in lieu of a dividend, provided the act of incorporation gives them power to increase the capital stock; and a mere declaration of policy on the part of a board of directors, not to take such a course, affords no ground for enjoining a subsequent board from so doing (Howell *v.* Chicago &c. R. Co., 51 *id.* 378); nor can an injunction be granted forbidding an individual to act as president of the company (People *v.* Albany & Susquehanna R. Co., *supra*); nor will the court, except in a case of necessity, and upon clear proof of misconduct, sworn to positively, grant an order suspending the directors (Ramsey *v.* Erie R. Co., 7 Abb. Pr. N. S. 156). Improper expenditures and immoral conduct do not constitute proper grounds for the granting of such order (*Id*). Nor can the directors be removed and a receiver appointed in an action by a stockholder, upon allegations of misconduct in part of their number; and misconduct even on the part of all the directors, affords no ground for bringing such a suit, and taking away the rights of the stockholders, either by placing the affairs of the company in the hands of a receiver, or by its dissolution (Belmont *v.* Erie R. Co., 52 Barb. 637; People *v.* Same, 36 How. Pr. 129). No injunction to suspend from office,

or restrain or prohibit from the performance of his duties as such, any director, trustee, or manager of the company, shall be granted, except by the court, and upon notice of at least eight days, of the application therefor, to the party to be enjoined (Laws 1870, chap. 151, § 1); nor can he be suspended or removed from office, otherwise than by the judgment of the Supreme Court in a civil action brought by the attorney-general in the name of the people of the State (*Id.* § 2). If the director or other officer of the company served with the notice of an application for an injunction restraining or affecting the business of the corporation, or for a receiver of its property and effects, or any part thereof, conceal from or omit to disclose to the other directors, trustees, managers, and officers of the company, the fact of such service, and the time and place at which the application is to be made, he is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine and imprisonment, and is liable, in a civil action, to the company for all damage which it shall sustain by reason of such proceedings (*Id.* § 4).

They are prohibited from making dividends, except from the surplus profits arising from the business of such corporation, or from dividing, withdrawing, or in any way paying to the stockholders, or any of them, any part of the capital stock (this restriction, however, is not to be construed to prevent a division and distribution of the capital stock of the company, which may remain after the payment of all its debts, upon the dissolution of such company, or the expiration of its charter); or from reducing the capital stock without the consent of the legislature; or from discounting or receiving any note, or other evidence of debt, in payment of any installment actually called in and required to be paid, or any part thereof, due, or to become due on any stock in the said company; or from receiving or discounting any note, or other evidence of debt, with the intent of enabling any stockholder in such company to withdraw any part of the money paid in by him on his stock; and in case of any violation of these provisions, the directors, under whose administration the same may have happened, except those who may have caused their dissent therefrom, to be entered at large on the minutes of the directors, at the time; and except those who were not present when the same happened, are, in their individual and private capacities, jointly and severally liable to the corporation, and, in the event of its dissolution, to any of its creditors, to the full amount of the capital stock of the company, so divided, withdrawn, paid out or reduced, and to the full amount of the notes or other evidences of debt so taken or discounted, in payment of any stock, and to the full amount of any notes or other evidences of debt so discounted, with the intent aforesaid, with legal interest on the said respective sums from the time such liability accrued, and no statute of limitations shall be a bar to any suit at law or in equity, against such directors, for any sums of money for which they are made liable as aforesaid (1 Rev. Stat. 601, § 2).

The liabilities imposed on the directors for the debts of the company,

by the Laws of 1845 (chap. 230, § 1), were repealed by the act of 1854 (Laws 1854, chap. 232, § 16; Amending, § 10 of the General act of 1850. Rochester *v.* Barnes, 26 Barb. 657).

(*b*) **The Election.** It is illegal to open the polls *before*, though not so, within a short time *after*, the hour fixed for the election, in the notice to the stockholders (People *v.* Albany & Susquehanna R. Co. 55, Barb. 344; s. c. 1 Lans. 308; s. c 7 Abb. Pr. N. S. 265; s. c. 38 How. Pr. 228); but the time for keeping the polls open, after the election has commenced, may be extended by the inspectors, in the exercise of reasonable discretion beyond that fixed by the directors for closing them (*Id.;* Matter of Mohawk &c. R. Co. 19 Wend. 135). It is competent for the stockholders themselves, where the prescribed form of procedure with regard to the election fails, on account of some unforeseen circumstance, to accomplish the purpose contemplated, to exercise the power of election, and provide for the appointment of inspectors for that purpose (Matter of Wheeler, 2 Abb. Pr. N. S. 361). Thus, where the inspectors chosen, are restrained by injunction from qualifying and performing their duties as such officers, the stockholders may proceed to choose other persons as inspectors (People *v.* Albany & Susquehanna R. Co. *supra*). An individual holding a proxy to vote, even though not a stockholder, has full authority to call the meeting to order, and to act in the place of the president in his absence, when requested so to do by such officer (*Id*), and where each of two rival parties assume to organize the meeting for the election of officers, the law will recognize the first formal and regular proceedings held for such purpose, as valid (Matter of Pioneer Paper Co. 36 How. Pr. 105). Those aggrieved by reason of such organization, may seek redress through the courts (*Id*). If the election be not held on the designated day, it becomes the duty of the president and directors to give notice of, and to cause an election for directors to be held within sixty days immediately thereafter; but the right to vote on any share or shares, on such subsequent day, shall only be exercised by the person or persons who would have had the right to vote thereon, on the day when such election ought to have been held (1 Rev. Stat. 604, § 8).

What will invalidate the election. The election is not necessarily vitiated by the reception of spurious votes. In order to have such effect, it must appear by affirmative proof, that such votes were cast in support of a ticket which was successful only by reason of such votes (*Ex-parte* Murphy, 7 Cow. 153; Matter of Desdoity, 1 Wend. 98); and where, in addition to such facts, it is also shown that others, than those claiming to be elected, received a clear majority of the legal votes cast, the court will set aside the election, and declare the persons receiving such lawful majority elected (Matter of Desdoity, *supra*). The election may also be set aside where votes

have been improperly rejected; though in such case the court cannot declare the ticket elected for which it is claimed they would have been cast (Matter of Long Island R. Co. 19 Wend. 37). Under such circumstances, should it appear that part of the alleged directors were on both tickets, the court may confine its order for a new election to those whose names appear only on the ticket complained of (*Id*). Surpriae and fraud employed by one portion of the stockholders towards another, will vitiate the election (People *v.* Albany & Susquehanna R. Co. 55 Barb. 344; s. c. 1 Lans. 308; s. c. 7 Abb. Pr. N. S. 265; s. c. 38 How. Pr. 228). So where the proceedings are strictly and technically irregular, the election will be vacated (*Id; Ex-parte* Willcocka, 7 Cow. 402). Where a stockholder votes for less than the requisite number of directors, his ballot is not thereby rendered void. He must be deemed to have acquiesced, as to the residue, in the choice of the other stockholders (Matter of the Union Insurance Co. 22 Wend. 591).

"It shall be the duty of the supreme court, upon the application of any person or persons or body corporate, that may be aggrieved by, or may complain of, any election, or any proceeding, act, or matter, in or touching the same (reasonable notice having been given to the adverse party, or to those who are to be affected thereby, of such intended application), to proceed forthwith and in a summary way, to hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matters or causes of complaint, and thereupon to establish the election so complained of, or to order a new election, or make such order and give such relief in the premises, as right and justice may appear to the said supreme court to require: *Provided*, That the said supreme court may, if the case shall appear to require it, either order an issue or issues to be made up in such manner and form as the supreme court may direct, in order to try the respective rights of the parties who may claim the same, to the office, or offices, or franchise in question; or may give leave to exhibit, or direct the attorney-general to exhibit, one or more information or informations in the nature of a *quo warranto* in the premises" (1 Rev. Stat. 603, § 5). In proceedings under this provision, notice of such application need only be given to those directors whose seats are sought to be vacated (*Ex-parte* Holmes, 5 Cow. 426). But *semble*, that the court will not take cognizance of formal objections, from any, but such aggrieved persons as are named in the application (Matter of Mohawk &c. R. Co. 19 Wend. 135).

(*c*) **By-laws respecting elections.** "No by-law of the directors and managers of any incorporated company, regulating the election of directors or officers of such company, shall be valid, unless the same shall have been published for at least two weeks in some newspaper in the county where such election shall be held, at least thirty days before such election" * * (1 Rev. Stat. 603, § 6). A by-law fixing the time and place when and where an election shall be held, is a by-law

within the provisions of this section (Matter of Long Island R. Co. 19 Wend. 37). *It seems* that the directors cannot restrict the choice of inspectors by a by-law (People *v.* Albany & Susquehanna R. Co. 50 Barb. 344; s. c. 1 Lans. 308; s. c. 7 Abb. Pr. N. S. 265; s. c. 38 How. Pr. 228). By-laws must be set forth in pleading, whenever it is desired to bring them to the notice of the court (Harker *v.* Mayor &c. of New York, 17 Wend. 199).

(*d*) **Right to vote.** "* * In all cases where the right of voting upon any share or shares of the stock of any incorporated company of this State, shall be questioned, it shall be the duty of the inspectors of the election to require the transfer-book of said company as evidence of stock held in the said company; and all such shares as may appear standing thereon in the name of any person or persons, shall be voted on by such person or persons, directly by themselves, or by proxy subject to the provisions of the act of incorporation" (1 Rev. Stat. 603, § 6). And in general, the inspectors, in determining the right of a claimant to vote, cannot go behind the transfer-book (Matter of Long Island R. Co. 19 Wend. 37). Thus they cannot try the genuineness of a proxy, apparently executed by a stockholder,—they are bound to accept it (Matter of Cecil, 36 How. Pr. 477); and if such proxy be invalid, redress must be sought from the courts after election (*Id.*); nor can they require an affidavit that the stock is not hypothecated (*Id.*); and even though it be hypothecated, yet, if on the books of the company, it stand in the pledgor's name, he may vote on it (*Id.*); Matter of Barker, 6 Wend. 509; *Ex-parte* Willcocks, 7 Cow. 402). Stock held for the company itself, by a trustee, cannot be voted on (*Ex-parte* Holmes, 5 Cow. 426); not so, however, of stock held by a trustee for the benefit of a cestui que trust (Matter of Barker, *supra*). Where the stock stands in the individual name of an officer, with the addition of his office, another is not entitled to vote on such stock, on proof that such officer has resigned, and that he has been duly appointed his successor. He should obtain a transfer of the stock from such former officer (Matter of Mohawk &c. R. Co. 19 Wend. 135). And where two persons hold certain shares of stock jointly, and they cannot agree upon the vote to be cast thereon, their vote on such stock may be rejected (Matter of Pioneer Paper Co. 36 How. Pr. 105). A proxy to vote, even though given for value, may be revoked by the stockholder, when such revocation will prevent a fraudulent use of it (Reed *v.* Bank of Newburgh, 6 Paige, 337). The laws of 1851 (chap. 321, § 1), provide that it shall be lawful for any married woman, being a stockholder or member of any bank, insurance company (other than mutual fire insurance companies), manufacturing companies, or other institution incorporated under the laws of this State, to vote at any election for directors or trustees by proxy or otherwise, in such company of which she may be a stockholder or member.

(*e*) **Oath of Inspectors.** "The inspectors who may be appointed to conduct any election of directors or any other office of any incorporated company of this State, shall be required before entering on the duties of their appointment, to take or subscribe the following oath or affirmation: "I, A. B., do solemnly swear (or affirm, as the case may be), that I will execute the duties of an inspector for the election now to be held, with strict impartiality, and according to the best of my ability" (1 Rev. Stat., 604, § 7). This oath may be sworn to before any person authorized to take acknowledgments. If, however, the inspectors are regularly appointed, they are inspectors *de facto*, and the court will not vacate an election simply because the precise form of the oath prescribed above was not adhered to (Matter of Mohawk &c. R. Co, 19 Wend. 135). So held where they were sworn *well and faithfully to perform the duties of the office of inspectors* (*Id*).

(*f*) **Who eligible to office of director.** Inspectors of election may be candidates for directorship (see N. B. to case *Ex-parte* Wilcox, 7 Cow. 402). There is the following restriction in regard to the board of directors of certain railroad corporations of this state: No stockholder, director or officer of either the New York Central Railroad Company, the Hudson River Railroad Company, or the Harlem Railroad Company, shall be a director or officer of the Erie Railway Company; and no stockholder, director or officer of the latter company shall be a director or officer in either of the three first named companies. The board of directors in each of the said companies may so classify the members of such board, by lot or otherwise, that as nearly as may be, one-fifth of their number shall go out of office at each annual election; and at the next election of directors in each of said companies, directors shall be voted for only in place of those whose terms shall then expire under the classification aforesaid (Laws 1868, chap. 278, § 3; Am'd Laws 1869, chap. 916, § 1).

The Books.—The book or books of any incorporated company in this State, in which the transfer of stock in any such company shall be registered, and the books containing the names of the stockholders, in any such company, shall, at all reasonable times during the usual hours of transacting business, be open to the examination of every stockholder of such company, for thirty days previous to any election of directors; and if any officer having charge of such books, shall, upon demand by any stockholder as aforesaid, refuse or neglect to exhibit such books, or submit them to examination as aforesaid, he shall for every such offence for-

feit the sum of two hundred and fifty dollars, the one moiety thereof to the use of the people of this state, and the other moiety to him who will sue for the same, to be recovered by action of debt in any court of record, together with the costs of such suit. (1 Rev. Stat. 601, § 1.)

The right here conferred upon the stockholder, is not only to examine the books within the time specified, but also the right to make any memorandum from such books (Cotheal *v.* Brouwer, 5 N. Y. 562; affirming s. c. *sub nom* Brouwer *v.* Cotheal, 10 Barb. 216); and the officer in charge of the books is not constituted a judge of the motives of the stockholder in making such inspection, nor of the purposes which the information thus obtained shall be made to subserve (*Id*). The authority of the transfer agent to permit a transfer of stock on the books of the company, accompanied by his possession of them, does not amount to such an *indicia* of authority to certify to ownership of stock, as to fix a liability for the falsity of such representations upon the company (Henning *v.* N. Y. & N. H. R. Co. 9 Bosw. 283). Section five of laws 1850 (chap. 140, as amended laws 1854, chap. 282, § 1), provides that at every election of directors, the books and papers of the company shall be exhibited to the meeting, if a majority of the stockholders present shall require it. Under this provision, a stockholder challenging votes is not entitled to a production of the books, although a prior by-law of the company authorized him to do so (People *v.* Albany & Susquehanna R. Co. 55 Barb. 344; s. c. 1 Lans. 308; s. c. 7 Abb. Pr. N. S. 265; s. c. 38 How. Pr. 228).

When board may be constituted of a less number.—* And any railroad company whose main route of road does not exceed fifteen miles may elect seven of its stockholders as a board of directors to manage its affairs at any annual election after the passage of this act. (Laws 1864, chap. 582, § 3.)

The directors of any company organized to operate a railway for public use, by means of a propelling rope or cable attached to a stationary power, may be limited to any number not less than five (Laws 1866, chap. 697, § 1).

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* That portion of section three, of chapter five hundred and eighty-two, of the laws of 1864, here omitted, relates to the duty of the company to supply drinking water for the passengers. The Section may be found entire under the head "Of the Management of the Road, *post*."

The officers.—The directors shall appoint one of their number president (*a*); they may also appoint a treasurer and secretary (*b*), and such other officers and agents as shall be prescribed by the by-laws. (Laws 1850, chap. 140, § 6.)

(*a*) **The president.** The president, by virtue of his office, has authority to collect subscriptions to the capital stock, (East New York &c. R. Co. *v.* Lighthall, 5 Abb. Pr. N. S. 458; s. c. 6 Robt. 407). He is, however, under no obligation, nor has he a right to produce in a suit against the company, its books or papers, even though served with a subpœna *duces tecum* requiring him to do so (Bank of Utica *v.* Hilliard, 5 Cow. 153; Same *v.* Same, *Id.* 419).

(*b*) **Treasurer and Secretary.** The directors are not imperatively required to appoint a treasurer and secretary, but the provisions of this section simply give them authority to do so (People *v.* Hills, 1 Lans. 202.) The secretary and treasurer of the company being simply servants, and holding their offices at the will of the directors, cannot be subject to an action in the nature of a *quo warranto* under section 432 of the Code (*Id*). It is the duty of the treasurer to pay any balance due, on demand, and in the absence of any agreement to the contrary; to keep the corporate money separate and distinct from the money of any other person (Second Avenue R. Co. *v.* Coleman, 24 Barb. 300).

VIII.

OF THE CAPACITY OF THE COMPANY TO HOLD REAL ESTATE; AND HEREIN OF THE MANNER OF ITS ACQUISITION.

Preliminary survey.—Every corporation formed under this act shall, in addition to the powers conferred on corporations in the third title of the eighteenth chapter of the first part of the Revised Statues have power to cause such examination and surveys for its proposed railroad to be made, as may be necessary to the selection of the most advantageous route; and for such purpose, by its officers or agents and servants, to enter upon the lands or waters of any person, but subject to responsibility for all damages which shall be done thereto. (Laws 1850, chap. 140, § 28, subd. 1.)

The law which permits an entry upon another's land for the purpose of making the preliminary survey for a railroad, is perfectly constitutional, since it makes suitable provision for compensation in case the land is subsequently taken. The constitution does not prohibit the legislature from permitting an entry to be made upon the property of an individual, for the purpose of a preliminary examination. The prohibition refers only to the *taking it* for public use without just compensation (Polly *v.* Saratoga &c. R. Co., 9 Barb. 449).

Map and profile of proposed route.—Every company formed under this act, before constructing any part of their road into or through any county named in their articles of association, shall make a map and profile of the route intended to be adopted by such

company in such county, which shall be certified by the president and engineer of the company, or a majority of the directors, and filed in the office of the clerk of the county in which the road is to be made, or in the office of the register in counties where there is a register's office. The company shall give written notice to all actual occupants of the land over which the route of the road is so designated, and which has not been purchased by or given to the company, of the time and place such map and profile were filed, and that the route designated thereby passes over the land of such occupant. Any occupant or owner of land over which such route passes, feeling aggrieved by the proposed location, may, within fifteen days after receiving written notice, as aforesaid, give ten days' notice, in writing, to such company and to the owners or occupants of lands to be affected by any proposed alteration, of the time and place of an application to a justice of the supreme court, in the judicial district where said lands are situated, by petition duly verified, for the appointment of commissioners to examine the said route. Such petition shall set forth the petitioners' objections to the route designated by the company, shall designate the route to which it is proposed to alter the same, and shall be accompanied by a survey, map and profile of the route as designated by the company and of the proposed alteration thereof, copies of which petition, map, survey and profile shall be served upon the company and said owner or occupants, with the notice of the application. If the said justice shall consider sufficient cause therefor to exist, he may, after hearing such parties as shall appear, appoint three disinterested persons, one of whom must be a practical civil engineer, commissioners to examine the route proposed by the company and the route to which it is pro-

posed to alter the same, and, after hearing the parties, to affirm the route originally designated, or adopt the proposed alteration thereof, as may be consistent with the just rights of all parties and the public, including the owners or occupants of lands upon the proposed alteration; but no alteration of the route shall be made except by the concurrence of the commissioner who is a practical civil engineer, nor shall an alteration be made which shall cause greater damage or injury to lands, or materially greater length of road, than the route designated by the company would cause, nor which shall substantially change the general line adopted by the company. The determination of the commissioners shall, within thirty days after their appointment, be made and certified by them, and the certificate, with the petition, map, survey and profile, and any testimony taken before them, be filed in the office of the register of the county, in counties where there is a register, otherwise in that of the county clerk. Within twenty days after the filing of such certificate any party may, by notice in writing to the others, appeal to the supreme court from the decision of the commissioners, which appeal shall be heard and decided at the next general term of the court held in any judicial district in which the lands of the petitioners or any of them are situated, for which the same can be noticed according to the rules and practice of said court. On the hearing of such appeal the court may affirm the route proposed by the company or may adopt that proposed by the petitioner. Said commissioners shall each be entitled to three dollars per day for their expenses and services, to be paid by the person who applied for their appointment; and if the route of the road as designated by the company is altered by the commissioners, and their decision is affirmed on appeal

(if an appeal be taken), the company shall refund to the applicant the amount so paid. (Laws 1850, chap. 140, § 22; Amd. Laws 1871, chap. 560, § 1.)

Capacity of company to receive and purchase land.—Every corporation formed under this act, shall, in addition to the powers conferred on corporations in the third title of the eighteenth chapter of the first part of the Revised Statutes, have power.

To take and hold such voluntary grants of real estate and other property as shall be made to it, to aid in the construction, maintenance and accommodation of its railroad; but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

To purchase, hold and use all such real estate and other property as may be necessary for the construction and maintenance of its railroad, and the stations and other accommodations necessary to accomplish the objects of its incorporation; but nothing herein contained shall be held as repealing, or in any way affecting the act entitled "An act authorizing the construction of railroads upon Indian lands," passed May 12, 1836 (*a*). (Laws 1850, chap. 140, § 28, subds. 2, 3.)

Voluntary conveyance.—The company may proceed to acquire title in two ways, either, first, with the consent of the owner of the fee; or, secondly, without his consent, by appraisal and payment of damages (Craig *v.* Rochester City &c. R. Co. 39 Barb. 494; Gilbert *v.* Columbia Turnpike Co. 3 Johns. Cas. 107). In the former case, it has the right to pay part of the consideration for the land, by opening and maintaining a portion of the same as a public street; and a condition to that effect, in the deed of such property is not void, as imposing an obligation on the company inconsistent with the purposes for which it was formed (Tinkham *v.* Erie R. Co. 53 Barb. 393). Where the premises were granted to the company, under the condition that the track should not cross south of a certain line, the grant was held inoperative upon the violation of such proviso (Douglass *v.* N. Y. & Erie R. Co. Clarke, 174); but

where the condition was that the railroad should be completed over such land by a certain day; yet upon failure to perform such condition, the grantor did not assert the forfeiture at once, but waited until the end of two years before doing so, during which time he had allowed the company to make considerable outlays on the premises; *Held*, that he had waived his rights (Ludlow *v.* N. Y. & H. R. Co. 12 Barb. 440). Nor can the grantor recover damages by reason of the land being used for railroad purposes, where he had voluntarily conveyed the premises without restriction (Matter of the Utica &c. R. Co. 56 Barb. 456); thus he cannot recover for injuries from fire, caused by the legitimate operation of the road, where no negligence is established (Rood *v.* N. Y. & Erie R. Co. 18 Barb. 80). So the grantee of land along the railroad, must take it it *cum onere* (Hentz *v.* Long Island R. Co. 13 Barb. 646). The title to certain real estate, purchased with the corporate funds, but without the knowledge of the company, the deed being taken in the name of a director, will, nevertheless, vest at once in the company (Buffalo &c. R. Co. *v.* Lampson, 47 Barb. 533).

Under the above subdivision three, of section twenty-seven, *it seems* the railroad company is restricted to no limits, except their necessities, in the acquisition of lands for stations &c.; and it would be a question for the jury, whether such real estate was *bonâ fide* purchased for the purposes contemplated in its charter (See Moss *v.* Averell, 10 N. Y. 462). The width of the road is limited to six rods, but in case of cuttings and embankments, the company may take as much more land as may be necessary to a proper construction of the road (Laws 1850, chap. 140, § 28, subd. 4).

(*a*) See under same general head, *post*.

Title to roadway how acquired.—In case any railroad company, the line or route of whose road has been surveyed and designated, and the certificate thereof duly filed as required by law, is unable to agree for the purchase of any real estate required for its roadway, the said corporation shall have the right to acquire title to the same by the special proceedings prescribed in the act hereby amended (*a*); and all real estate acquired by any railroad corporation, under and pursuant to the provisions of this act, for the objects and purposes herein expressed, shall be deemed to be acquired for public use. But this section shall not be so construed as to apply to any real estate in the city

of Buffalo, situate between Main and Michigan streets. (Laws 1854, chap. 282, § 4.)

(*a*) Laws 1870, chap. 140.

Title to real estate, how acquired against consent of owner.—In case any company formed under this act is unable to agree for the purchase of any real estate required for the purposes of its incorporation, it shall have the right to acquire title to the same in the manner, and by the special proceedings prescribed in this act. (Laws 1850, chap. 140, § 13.)

The constitutionality of the proceedings. The legislature cannot take the land of one individual against his consent, and bestow it upon another unless the public interest will be advanced thereby (Beekman *v.* Saratoga & Schenectady R. Co. 3 Paige, 45; Taylor *v.* Porter, 4 Hill, 140); but as long ago as 1837, the court of last resort of this State, decided, that lands taken for a railroad, were taken for public use (Bloodgood *v.* Mohawk &c. R. Co. 18 Wend. 9, reversing s. c. 14 *id.* 51; see also People *v.* Law, 34 Barb. 494; s. c. 22 How. Pr. 109; Buffalo & N. Y. City R. Co. *v.* Brainard, 9 N. Y. 100; Beekman *v.* Saratoga and Schenectady R. Co. *supra*). So, even the franchises of a corporation may be taken for public use, upon making due compensation therefor (In the matter of Kerr, 42 Barb. 119). Nor is the act unconstitutional because it does not appropriate the specific land taken for public use itself, but delegates to the company the right in each particular case to make the location and selection (Buffalo &c. R. Co. *v.* Brainard, *supra*).

Statutory conveyance. Under the above provision, the company, in cases where the lands required for the road cannot be obtained by purchase, may proceed to take the same adversely to the owner, or without his consent. In all cases, however, where it is possible, the owner is entitled to the benefit of a voluntary sale (Dyckman *v.* Mayor &c. of New York, 5 N. Y. 434; affirming s. c. 7 Barb. 498; Gilbert *v.* Columbia Turnpike Co. 3 Johns. Cas. 107); and the disagreement of the parties, as to the amount of compensation, is a material requirement of the statute, without which the court has not jurisdiction (Gilbert *v.* Columbia Turnpike Co. *supra*). Since this section aims to divest the land owner of the property in question, without his consent, the provisions of the following sections must be strictly followed, in order to accomplish such end (Adams *v.* Saratoga &c. R. Co. 10 N. Y. 328; Sharp *v.* Speir, 4 Hill, 76).

Title, how acquired previous to act of 1850. The laws of 1847 (chap. 404, § 1) provided, that when the owner of any lands which a railroad company chartered in this state, or authorized to construct any portion of its railroad therein, should be authorized by the laws of this state to take for the construction of its railroad, should from any cause be incapable of selling the same, or when the company could not agree with such owner for the purchase thereof, or when, after diligent search and inquiry the name and residence of such owner could not be ascertained, the company might acquire the title of such owner to such lands in the same manner as plankroad and turnpike companies might acquire lands under like circumstances, for the purposes of their incorporation.

When proceedings need not be followed. Where the company is incorporated under a special act, and the manner of acquiring title to lands as provided in its charter, is inconsistent with the provisions of the general railroad act for the same purpose, the proceedings may be had under the charter, and not under the general act (Clarkson *v.* Hudson River R. Co., 12 N. Y. 304; Visscher *v.* Same, 15 Barb. 37; Mosier *v.* Hilton, *id.* 657; Hudson River R. Co. *v.* Outwater, 3 Sandf. 689). The test of inconsistency in such cases being: Can the requirements of both the charter and the general act be followed out and complied with in one case (Visscher *v.* Hudson River R. Co., *supra*). The laws of 1857, (chap. 444, § 2), provide that *any* railroad company may acquire title to any land which it may require for roadway, and for necessary buildings, depots, and freight grounds, by the special proceedings of the general railroad act. Either mode, therefore, may be pursued (Moshier *v.* Hilton, *supra*).

Special proceeding. A proceeding under the following sections of the railroad act, for the purpose of acquiring land by appraisement of compensation &c. is a special proceeding (N. Y. Cent. R. Co. *v.* Marvin, 11 N. Y. 276).

When commissioners may be appointed.—Any railroad company which has been, or which may hereafter be, duly formed under the act entitled "An Act to authorize the formation of railroad corporations and to regulate same," passed April second, eighteen hundred and fifty, and which is duly continued in existence, when at least ten thousand dollars for every mile of its railroad proposed to be constructed in this

state, shall be, in good faith, subscribed to its capital stock, and ten per cent thereof paid in, may apply to the court for the appointment of commissioners, and all subsequent proceedings may be had to obtain the title to lands necessary for the construction of its railroad, to the same extent and in the same manner as if the whole amount of the capital stock specified in its articles of association was in like manner subscribed. (Laws 1851, chap. 19, § 3; Am'd Laws 1853, chap. 53, § 1; Am'd Laws 1867, chap. 515, § 1.)

The amendment of 1867, extends the provisions of the section to corporations thereafter to be formed, as well as those in existence at the passage of the act.

The proceedings of the commissioners, appointed under the above section, must conform to the provisions of the general act of 1850 (Troy & Boston R. Co. *v.* Northern Turnpike Co., 16 Barb. 100); and the railroad company may appeal from their award (*Id*).

Same; with reference to narrow gauge roads.—Any railroad company duly organized according to law, when the gauge of its proposed railroad shall be three feet and six inches or less, but not less than thirty inches, within the rails, may, whenever six thousand dollars for every mile of its railroad proposed to be constructed in this state is in good faith subscribed towards its capital stock, and ten per cent thereon paid in good faith in cash, apply to the supreme court in the manner provided by law for the appointment of commissioners, and all subsequent proceedings may be had to obtain the title to lands necessary for the construction and maintenance and operating said railroad, to the same extent and in the same manner as if the whole amount of the capital stock specified in its articles of association was in like manner subscribed, and ten per cent thereof in like manner paid in cash, and may lay upon such road iron of

a weight not less than forty pounds to the lineal yard, and may use in switches and turn-outs irons of not less than thirty pounds to the lineal yard. (Laws 1871, chap. 560, § 6.)

It was also provided by the same act, that any railroad company, then duly organized and legally kept in existence, and which had not constructed its railroad, might, for the purpose of constructing, maintaining, and operating a road of such gauge, acquire title to lands in the manner provided above (Laws 1871, chap. 560, § 7).*

The petition.—For the purpose of acquiring such title, the said company may present a petition, praying for the appointment of commissioners of appraisal, to the supreme court, at any general or special term thereof held in the district in which the real estate described in the petition is situated. Such petition shall be signed and verified according to the rules and practice of such court. It must contain a description of the real estate which the company seeks to acquire; and it must, in effect, state that the company is duly incorporated, and that it is the intention of the company, in good faith, to construct and finish a railroad from and to the places named for that purpose in its articles of association; that the whole capital stock of the company has been in good faith subscribed as required by this act; that the company has surveyed the line or route of its proposed road, and made a map or survey thereof, by which such route or line is designated, and that they have located their said road according to such survey, and filed certificates of such location, signed by a majority of the directors of the company, in the clerk's office of the several counties through or into which the said road is to be constructed; that the land described in the petition is required for the purpose of constructing or operating

the proposed road; and that the company has not been able to acquire title thereto, and the reason of such inability (*a*). The petition must also state the names and places of residence of the parties, so far as the same can by reasonable diligence be ascertained, who own or have, or claim to own or have, estates or interests in the said real estate; and if any such persons are infants, their ages, as near as may be, must be stated; and if any of such persons are idiots or persons of unsound mind, or are unknown, that fact must be stated, together with such other allegations and statements of liens or incumbrances on said real estate as the company may see fit to make. A copy of such petition, with a notice of the time and place the same will be presented to the supreme court, must be served on all persons whose interests are to be affected by the proceedings, at least ten days prior to the presentation of the same to the said court (*b*). (Laws 1850, chap. 140, § 14.)

(*a*) **What petition should state.** This section does not require the petition to state that the company has been unable to agree for the purchase of the property, but that the company has not been able to acquire title thereto, and the reason of such inability (Matter of the N. Y. Cent. R. Co., 20 Barb. 419).

(*b*) **Notice.** One object of requiring ten days' notice of the presentation of the petition, to be served, is to afford an opportunity to raise questions of regularity in the proceedings, such as, that the petition is not properly verified, or that it does not appear by the petition that the company has been unable to agree for the purchase of the right of way in question. It is too late to raise such objections on motion to confirm the report (N. Y. & Erie R. Co. *v.* Corey, 5 How. Pr. 177). Third parties holding liens upon the lands proposed to be taken should be notified as well as the owners (Watson *v.* N. Y. Cent. R. Co., 6 Abb. Pr. N. S. 91).

In an answer to an action for trespass, setting up title by virtue of special proceedings under a statute, requiring notice of not less than ten days to persons affected by such proceedings, an allegation that reasonable notice was given, is bad (Cruger *v.* Hudson River R. Co., 12 N. Y. 190).

Petition and notice, how served on resident.—If the person on whom such service is to be made resides in this state, and is not an infant, idiot or person of unsound mind, service of a copy of such petition and notice must be made on him or his agent or attorney, authorized to contract for the sale of the real estate described in the petition, personally, or by leaving the same at the usual place of residence of the person on whom service must be made as aforesaid, with some person of suitable age. (Laws 1850, chap. 140, § 14, subd. 1.)

Where the person on whom such service was to be made, although a resident of this state, was at the time, absent in Europe, held that a service of the notice on a party of suitable age, left in charge of the dwelling-house of such person during his absence, was in conformity with the statute (In the matter of the N. Y. & Oswego Midland R. Co. 40 How. Pr. 335).

On non-resident.—If the person on whom such service is to be made resides out of the state, and has an agent residing in this state, authorized to contract for the sale of the real estate described in the petition, such service may be made on such agent, or on such person personally out of the state; or it may be made by publishing the notice, stating briefly the object of the application, and giving a description of the land to be taken, in the state paper, and in a paper printed in the county in which the land to be taken is situated, once in each week for one month next previous to the presentation of the petition. And if the residence of such person residing out of this state, but in any of the United States, or any of the British colonies in North America, is known, or can by reasonable diligence be ascertained, the company must, in addition to such publication as aforesaid, deposit a copy of the petition and

notice in the post-office, properly folded and directed to such person at the post-office, nearest his place of residence, at least thirty days before presenting such petition to the court, and pay the postage chargeable thereon in the United States. (Laws 1850, chap. 140, § 14, subd. 2.)

On infant.—If any person on whom such service is to be made is under the age of twenty-one years, and resides in this state, such service shall be made as aforesaid on his general guardian; or if he has no such guardian, then on such infant personally, if he is over the age of fourteen years; and if under that age, then on the person who has the care of, or with whom such infant resides. (Laws 1850, chap. 140, § 14, subd. 3.)

On person of unsound mind.—If the person on whom such service is to be made is an idiot, or of unsound mind, and resides in this state, such service may be made on the committee of his person or estate; or if he has no such committee, then on the person who has the care and charge of such idiot or person of unsound mind. (Laws 1850, chap. 140, § 14, subd 4.)

On unknown party.—If the person on whom such service is to be made is unknown, or his residence is unknown, and cannot by reasonable diligence be ascertained, then such service may be made, under the direction of the court, by publishing a notice, stating the time and place the petition will be presented, the object thereof, with a description of the land to be affected by the proceedings, in the state paper, and in a paper printed in the county where the land is situated, once in each week for one month previous to the pre-

sentation of such petition. (Laws 150, chap. 140, § 14, subd. 5.)

Service in cases not provided for.—In all cases not herein otherwise provided for, service of orders, notices, and other papers in the special proceedings authorized by this act, may be made as the supreme court shall direct. (Laws 1850, chap. 140, § 14, subd. 7.)

Interests of infants &c. how protected.—In case any party to be affected by the proceedings is an infant, idiot, or of unsound mind, and has no general guardian or committee, the court shall appoint a special guardian or committee to attend to the interests of such person in the proceedings; but, if a general guardian or committee has been appointed for such person in this state, it shall be the duty of such general guardian or committee to attend to the interests of such infant, idiot, or person of unsound mind; and the court may require such security to be given by such general or special guardian or committee, as it may deem necessary to protect the rights of such infant, idiot, or person of unsound mind; and all notices required to be served in the progress of the proceedings may be served on such general or special guardian or committee. (Laws 1850, chap. 140, § 14, subd. 6.)

Where proceedings are taken by a railroad company under its charter to acquire title to land, and one of the owners of land taken is an infant, it is indispensable that some proper person should be appointed to appear before the jury of appraisers, to represent and attend to the interest of such infant on the appraisement; and the statute is not complied with simply by an appointment of an attorney for the infant owner sufficient in form; but it is the duty of the company to see that some reliable person, residing in the vicinity, be appointed, who should in fact personally appear before the jury and protect the inter-

ests of the infant. Without such appointment and appearance all the proceedings of the jury affecting such interests, are unauthorized and void, and the appointment of the attorney is nugatory (Hotchkiss *v.* Auburn & Rochester R. Co. 36 Barb. 600).

Rights of unknown party, how protected.—The court shall appoint some competent attorney to appear for, and protect the rights of any party in interest who is unknown, or whose residence is unknown, and who has not appeared in the proceedings by an attorney or agent.* (Laws 1850, chap. 140, § 20.)

Appointment of commissioners.—On presenting such petition to the supreme court as aforesaid, with proof of service of a copy thereof and notice as aforesaid, all or any of the persons whose estates or interests are to be affected by the proceedings may show cause against granting the prayer of the petition, and may disprove any of the facts alleged in it (*a*). The court shall hear the proofs and allegations of the parties (*b*), and if no sufficient cause is shown against granting the prayer of the petition, it shall make an order for the appointment of three disinterested and competent freeholders, who reside in the county or some adjoining county where the premises to be appraised are situated, commissioners to ascertain and appraise the compensation to be made to the owners or persons interested in the real estate proposed to be taken in such county for the purposes of the company, and to fix the time and place for the first meeting of the commissioners (*c*). (Laws 1850, chap. 140, § 15; Am'd Laws, 1854, chap. 282, § 2.)

(*a*) **What may be considered on presentation of petition.** Questions of regularity in the proceedings such as that neither

* The remainder of the section, here omitted, relates to the power of the court to amend the special proceedings, and may be found on page 84. *Vide post*, p. 84.

the petition nor the map referred to in the petition as filed in the county clerk's office, shows what extent of land is proposed to be taken, or anything more than a line indicating the direction of the proposed railroad (Matter of N. Y. & Jamaica R. Co. 21 How. Pr. 434); or that the petition upon which the commissioners were appointed was not properly verified, or that it does not appear by the petition that the company had been unable to agree for the purchase of the right of way in question, are properly raised upon the presentation of the petition for the appointment of commissioners of appraisal (N. Y. & Erie R. Co. *v.* Corey, 5 How. Pr. 177). One object of requiring ten days' notice of the presentation of the petition, as provided by the preceding section, was to afford an opportunity to raise questions of this character, and it is too late to raise such objections on motion to confirm the commissioners' report (*Id.*). But an appearance and litigation upon the merits, is *held* to be a waiver of defects otherwise available (Mohawk &c. R. Co. *v.* Artcher, 6 Paige, 84; Dyckman *v.* Mayor &c., 1 Seld. 434).

(*b*) **An issue is raised, when.** Where any of the facts alleged in the petition are denied, an issue is raised, and the court is to hear the *proofs* and *allegations* of the parties; but *legal evidence* only is allowable to disprove the facts alleged in the petition, and affidavits read to disprove the facts must be excluded from consideration (Buffalo & State Line R. Co. *v.* Reynolds, 6 How. Pr. 96).

(*c*) **Order appointing the commissioners.** Commissioners may be appointed under the above section, to ascertain and appraise the compensation to be made to the several owners included in the one petition (Troy & Rutland R. Co. *v.* Cleveland, 6 How. Pr. 238). This mode of ascertaining the damages of the owners of land taken for the purposes of the railroad, by commissioners, is not repugnant to the constitution (Beekman *v.* Saratoga &c. R. Co. 3 Paige, 45). Should any of the commissioners die, or refuse, or neglect to serve, or be incapable of serving, it is the duty of the court to make appointments to fill the vacancies (See Laws 1850, chap. 140, § 20). Upon motion, one special term has power to vacate the order made by another, and appoint new commissioners, and such order being discretionary, is not the subject of review on appeal (In the Matter of the N. Y. & Oswego Midland R. Co. 40 How. Pr. 335); and if such first order was obtained *ex-parte*, or the person being free from any fault, was prevented from appearing at the hearing, and injustice has been done him, it is the duty of the court to open the default, and afford the injured party the relief to which he may be entitled (*Id.*).

Duties of commissioners; the report.—The commissioners shall take and subscribe the oath pre-

scribed by the twelfth article of the constitution (*a*). Any of them may issue subpœnas and administer oaths to witnesses; a majority of them may adjourn the proceedings before them from time to time, in their discretion. Whenever they meet, except by the appointment of the court, or pursuant to adjournment, they shall cause reasonable notice of such meetings to be given to the parties interested, or their agent or attorney. They shall view the premises described in the petition, and hear the proofs and allegations of the parties (*b*), and reduce the testimony taken by them, if any, to writing, and after the testimony in each case is closed, they, or a majority of them, all being present, shall, without any unnecessary delay, and before proceeding to the examination of any other claim, ascertain and determine the compensation which ought justly to be made by the company to the owners or persons interested in the real estate appraised by them; and in fixing the amount of such compensation, said commissioners shall not make any allowance or deduction on account of any real or supposed benefits which the parties interested may derive from the construction of the proposed railroad, or the construction of the proposed improvement connected with such road, for which such real estate may be taken (*c*). They, or a majority of them, shall also determine what sum ought to be paid to the general or special guardian or committee of an infant, idiot, or person of unsound mind, or to an attorney appointed by the court to attend to the interests of any unknown owner or party in interest, not personally served with notice of the proceedings, and who has not appeared, for costs, expenses, and counsel fees. The said commissioners shall make a report of their proceedings to the supreme court, with the minutes of the testimony

taken by them, if any (*d*); and they shall each be entitled to five dollars for services and expenses for every day they are actually engaged in the performance of their duties, to be paid by the company, except where the owners or persons interested in the real estate fail to have awarded them more than the amount of compensation offered them by the company before the appointment of commissioners, then to be paid by the said owners or persons interested, or if not paid by them, to be paid by the company, and deducted from the amount awarded. (Laws 1850, chap. 140, § 16; Am'd Laws 1854, chap. 282, § 3; Am'd Laws 1864, chap. 582, § 4.)

(*a*) **Oath of office.** The oath of office here alluded to reads as follows: "I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of New York; and that I will faithfully perform the duties of the office of ———, according to the best of my ability."

(*b*) **Order of procedure.** Where the commissioners were required "to view the premises and hear the proofs and allegations of the parties," it is discretionary with them to determine the order in which they shall proceed. They must not omit to hear the proofs and allegations of the parties, but whether they shall hear these before, or after, viewing the premises, is for them to decide. They may also determine which party shall open and close the argument (Albany Northern R. Co. *v.* Lansing, 16 Barb. 68).

Right of land-owner to be heard. The land owner, whose compensation is the subject of appraisal and determination, has full opportunity to be heard (N. Y. & Erie R. Co. *v.* Coburn, 6 How. Pr. 223). It is his right to produce before the commissioners, and the duty of the commissioners to hear, any and all evidence which would be competent in courts of law upon similar questions (Rochester & Syracuse R. Co. *v.* Budlong, 6 How. Pr. 467). The established rules of evidence must be their guide in these proceedings (Troy & Boston R. Co. *v.* Northern Turnpike Co. 16 Barb. 100); but they are not, like other tribunals, to be governed exclusively by evidence. They are required to view the premises as well as to hear the proofs and allegations of the parties (Troy & Boston R. Co. *v.* Lee, 13 *id.* 169). While a technical error will be disregarded, an appeal from the report of the commissioners will

be sustained, where proper evidence was offered by a party and rejected by the commissioners, which evidence, had it been admitted, might have led to a more favorable determination (Rochester & Syracuse R. Co. *v.* Budlong, 6 How. Pr. 467).

(*c*) **Amount of compensation.** The intention of the legislature was to confine the commissioners to an estimate of the price to be paid by the railroad company to the owner upon this involuntary sale of his land, regardless of the benefits or injuries which might result to him as the owner of the adjoining land, in consequence of the contemplated improvement (Albany Northern R. Co. *v.* Lansing, 16 Barb. 68). Thus where the commissioners determined the compensation to be made to the owner "for the damages occasioned by the construction and operation of the railroad over his premises," instead of, for the real estate "proposed to be taken" and "to be appraised by them," it was held that they had entirely misapprehended the principles upon which they were to make the award, and the report was set aside (Canandaigua &c. R. Co. *v.* Payne, 16 Barb. 273). They are to consider how *the taking* of the land, and not how *the use* of it, in any particular mode, would affect the residue of the owner's land (Albany Northern R. Co. *v.* Lansing, *supra*). They are not authorized to appraise the land of an individual with a reservation of easements and privileges to the owner. They must appraise the land at its actual value (Hill *v.* Mohawk & Hudson R. Co., 7 N. Y. 152; affirming s. c. 5 Denio, 206). The proper inquiry for the Commissioners is, what is the fair marketable value of the whole property, and then what will be the fair marketable value of the property not taken; the difference will be the true amount of compensation to be awarded (Troy & Boston R. Co. *v.* Lee, 13 Barb. 169; Canandaigua &c. R. Co. *v.* Payne, 16 *id.* 273; see also matter of Furman Street, 17 Wend. 650; matter of William and Anthony Streets, 19 *id.* 678). But consequential damages will not be allowed for anticipated injuries from fire caused by sparks from the company's engines (Matter of Union Village & Johnsonville R. Co., 53 Barb. 457; s. c. 35 How. Pr. 420; citing Albany Northern R. Co. *v.* Lansing and Troy & Boston R. Co. *v.* Lee, *supra*); though in a recent case it was said, that everything which would depreciate the value of the residue was to be taken into account. So if its value was depreciated by the noise, smoke, or increased danger, or because it was more exposed to fire, or more difficult of access—all such considerations were to be included in the estimate of damages (Matter of the Utica &c. R. Co., 56 Barb. 456). Compensation includes not only the value of the portion taken, but also the diminution in value of that from which it is severed. This may always be proved by the opinions of competent witnesses (Rochester & Syracuse R. Co. *v.* Budlong, 6 How. Pr. 467). But no action will lie to recover damages for a depreciation in value, of the portion not taken, in addition to the compensation properly awarded for the portion taken (Furniss *v.* Hudson River R. Co., 5 Sandf. 551).

In whose favor compensation shall be assessed. A statutory provision requiring compensation to be assessed to the owners or persons interested in the land taken for public use, does not include the wife of the owner of the fee. She is divested of her inchoate right or possibility of dower, when the land is taken from the husband in his lifetime by regular proceeding, and he is duly compensated therefor (Moore *v.* Mayor &c. of N. Y., 8 N. Y. 100; affirming s. c. 4 Sandf. 456); but a widow is clearly within such statutory provisions, and it is the duty of the commissioners to assess the value of her life estate or dower in such lands, and award it to her as damages (Matter of William and Anthony Streets, 19 Wend. 678). The commissioners should also determine the compensation to be made to a mortgagee of the lands so taken (Matter of John and Cherry Streets, 19 Wend. 659); and the fact that the mortgage debt is not then due, makes no difference (*Id.*). So, where the company acquires the title to land on making due compensation for its value, upon which land there was a mortgage of which the company had constructive notice: *Held*, on foreclosure and sale in parcels of the whole of the mortgaged premises, that the company was bound to contribute to the payment of the mortgaged debt, if the same was not paid by the sale in the inverse order of alienation of the other property covered by the mortgage, the full value at the time of such appropriation, of the respective parcels of the mortgaged property taken by it, with interest to the time of payment (Dows *v.* Congdon, 16 How. Pr. 571). But these provisions do not require compensation to be made to one whose land has not been taken for railroad purposes, even though he suffers indirect and consequential injuries by reason of the construction of such road (Arnold *v.* Hudson River R. Co., 49 Barb. 108; Drake *v.* Same, 7 *id.* 503; Barnes *v.* Southside R. Co., 2 Abb. Pr. N. S. 415), and an injunction will not be granted on behalf of such party, restraining the company from proceeding with the construction of their road, on the ground that he will suffer indirect and consequential damages (Barnes *v.* Southside R. Co., *supra*).

(*d*) **The report.** There is no rule of law or principle of public policy requiring the commissioners to be together at the signing of the report (Rochester &c. R. Co. *v.* Beckwith, 10 How. Pr. 168). The report may embrace a succession of appraisals by the same commissioners (Troy & Rutland R. Co. *v.* Cleveland, 6 How. Pr. 238).

Appraisal not affected by change of ownership.—When any proceedings of appraisal shall have been commenced, no change of ownership by voluntary conveyance or transfer of the real estate or any inter-

est therein, or of the subject matter of the appraisal, shall in any manner affect such proceedings, but the same may be carried on and perfected, as if no such conveyance or transfer had been made or attempted to be made. (Laws 1854, chap. 282, § 6.)

Report, how confirmed.—On such report being made by said commissioners, the company shall give notice to the parties or their attorneys to be affected by the proceedings, according to the rules and practice of said court, at a general or special term thereof, for the confirmation of such report, and the court shall thereupon confirm such report, and shall make an order, containing a recital of the substance of the proceedings in the matter of the appraisal, and a description of the real estate appraised for which compensation is to be made; and shall also direct to whom the money is to be paid, or in what bank, and in what manner it shall be deposited by the company. (Laws 1850, chap. 140, § 17.)

Order confirming report. When a report of commissioners of appraisement is made, which upon its face appears to conform in substance to the requirements of the act, and notice is given according to the rules and practices of the court for its confirmation, the court should confirm it (N. Y. & Erie R. Co. *v.* Corey, 5 How. Pr. 177; Rochester & Syracuse R. Co. *v.* Beckwith, 10 How. Pr. 169). The truth of the matter contained in the report cannot be impeached or contradicted on application to confirm the report, but can only be reviewed under section eighteen of the act of 1850 (*Id*). Until the order is made confirming the report and directing the payment of the money, the company has no right to the land, nor the land-owner to the money awarded, and the proceedings may be set aside or abandoned (Hudson River R. Co. *v.* Outwater, 3 Sandf. 689).

What may be considered on motion to confirm report. Upon a motion to confirm the report of the commissioners, the court cannot consider objections or exceptions to such report, except those which state that neither the report, nor any of the proceedings

which precede it, properly designate the land proposed to be taken. Other objections and exceptions must be considered on appeal from the report, after confirmation, as provided by section eighteen (Matter of N. Y. & Jamaica R. Co., 21 How. Pr. 434). The act of 1850 does not give the court power to set aside the report of commissioners of appraisal upon motion, and it is only on appeal from the report that a new appraisal may be ordered and new commissioners appointed (Albany Northern R. Co. *v.* Crane, 7 How. Pr. 164; N. Y. & Erie R. Co. *v.* Corey, 5 *id.* 177; N. Y. & Erie R. Co. *v.* Coburn, 6 *id.* 223; Rochester & Syracuse R. Co. *v.* Budlong, *Id.* 467; Rochester &c. R. Co. *v.* Beckwith, 10 *id.* 169). The commissioners should not be allowed to stultify themselves in any case by alleging that they signed the report without reading, or hearing it read (Rochester &c. R. Co. *v.* Beckwith, 10 How. Pr. 169).

Effect of order confirming report.—A certified copy of the order so to be made as aforesaid shall be recorded at full length in the clerk's office of the county in which the land described in it is situated; and thereupon, and on the payment or deposit by the company of the sums to be paid as compensation for the land (*a*), and for costs, expenses, and counsel fees as aforesaid, and as directed by said order, the company shall be entitled to enter upon, take possession of, and use the said land for the purposes of its incorporation, during the continuance of its corporate existence, by virtue of this or any other act; and all persons who have been made parties to the proceedings shall be divested and barred of all right, estate, and interest in such real estate, during the corporate existence of the company as aforesaid (*b*). All real estate acquired by any company under and pursuant to the provisions of this act, for the purposes of its incorporation, shall be deemed to be acquired for public use. Within twenty days after the confirmation of the report of the commissioners, as provided for in the seventeenth section of this act, either party may appeal, by notice in writing to the other, to the supreme court, from the ap-

praisal and report of the commissioners (*c*). Such appeal shall be heard by the supreme court at any general or special term thereof, on such notice thereof being given, according to the rules and practice of said court (*d*). On the hearing of such appeal, the court may direct a new appraisal before the same or new commissioners in its discretion (*e*); the second report shall be final and conclusive on all the parties interested. If the amount of the compensation to be made by the company is increased by the second report, the difference shall be a lien on the land appraised, and shall be paid by the company to the parties entitled to the same, or shall be deposited in the bank, as the court shall direct (*f*); and if the amount is diminished, the difference shall be refunded to the company by the party to whom the same may have been paid; and judgment therefor may be rendered by the court, on the filing of the second report, against the party liable to pay the same. Such appeal shall not affect the possession by such company of the land appraised; and when the same is made by others than the company, it shall not be heard, except on a stipulation of the party appealing not to disturb such possession. (Laws 1850, chap. 140, § 18.)

(*a*) **Prima facie evidence of payment of compensation.** Where the railroad company took possession of a narrow strip of land for the purposes of its road, and continued to exercise the right of ownership over the same, for several years, it was *held*, on appeal, that this was *prima facie* evidence of the payment of the compensation awarded (Terry *v.* N. Y. Cent. R. Co., 22 Barb. 574).

(*b*) **Title, how vested in the company.** Upon the consummation of the proceedings prescribed by the railroad act, *all persons who have been made parties to the proceedings* are divested and barred of their interest in such land, and have no longer a legal right to keep the company out of possession (Niagara Falls &c. R. Co. *v.* Hotchkiss, 16 Barb. 270). It is a statutory conveyance of the land, *wholly* divesting the

owner of his title and vesting it in the company, and the further provision in the same section, that if, on the second appraisal, the compensation is increased, the difference shall be a *lien* upon the land appraised, is but a recognition that the title to the premises taken becomes vested in the company (Crowner *v.* Watertown & Rome R. Co. 9 How. Pr. 457). And the company, by changing the route of their road, as they have power to do under the provisions of the twenty-third section of the general act of 1850, cannot avoid paying the sum awarded as compensation for the land, on the ground that the premises are not necessary for them (*Id*). Should force be used to prevent the company from occupying the land, the persons so resisting are amenable to the law for their unlawful misconduct; but such a state of facts will not authorize the court, upon the application of the railroad company, to issue a writ of possession or assistance to enforce a right which it had never declared by its judgment, and which it had no authority to declare; the statute, not the court, has declared the rights of the parties (Niagara Falls &c. R. Co. *v.* Hotchkiss, 16 Barb. 270). *It seems*, however, that such persons might be restrained by injunction from such interference (*Id*).

Nature of the estate acquired. Railroad companies under the general act do not acquire the same unqualified title, and right of disposition, to the real estate taken for the road and paid for according to the act, which individuals have in their lands; but the title to the land being limited to its use for the purposes of the railroad enterprise, it is subject to the exercise of all those powers reserved to the legislature to which the franchises of the corporation are subject (Albany Northern R. Co. *v.* Brownell, 24 N. Y. 345); nor do they acquire any greater rights than the parties against whom they proceeded possessed (Anderson *v.* Rochester &c. R. Co. 9 How. Pr. 553). And *semble*, that where the corporation, not being seized in fee simple, holds title to lands merely for the purpose of operating a railroad, this is not such an adverse possession as will bar an action for the recovery thereof (Watson *v.* N. Y. Cent. R. Co. 6 Abb. Pr. N. S. 91). All lands acquired by the company by appraisal for passenger and freight depots, shall be held by the company in fee (Laws 1854, chap. 282, § 17).

(*c*) **Who may appeal.** The party deeming himself aggrieved by the decision of the commissioners, may bring the matter before the court by appeal (N. Y. & Erie R. Co. *v.* Corey, 5 How. Pr. 117). Where the report embraces several interests, any person interested and made a party, may appeal from such parts thereof as affect him (Troy & Rutland R. Co. *v.* Cleveland, 6 How. Pr. 238).

When an appeal will lie. An appeal will lie from the award of the commissioners, as well as from the proceedings to obtain such award (Troy & Boston R. Co. *v.* Northern Turnpike Co. *v.* 16 Barb. 100; N. Y.

& Erie R. Co. *v.* Corey, 5 How. Pr. 177; N. Y. & Erie R. Co. *v.* Coburn, 6 *id.* 223; Rochester &c. R. Co. *v.* Budlong, *Id.* 467; Rochester &c. R. Co. *v.* Beckwith, 10 *id.* 169; Albany Northern R. Co. *v.* Cramer, 7 *id.* 164); and an appeal from the report of the commissioners was sustained, where proper evidence was offered by a party interested, and rejected by the commissioners, which evidence, had it been admitted, might have led to a more favorable determination (Rochester & Syracuse R. Co. *v.* Budlong, 6 How. Pr. 467).

When an appeal will not lie. If the court upon appeal is satisfied that the commissioners have not erred in the principles upon which they have made their appraisal, no other error will be sufficient to send the report back for review (Troy & Boston R. Co. *v.* Lee, 13 Barb. 169). Nor will the court interfere upon the ground that the amount of damages was too small or too great, unless the evidence of injustice is palpable on its face (Rochester & Syracuse R. Co. *v.* Budlong, 6 How. Pr. 467); and a mere technical error cannot be allowed to affect the appraisal, unless it appears that such error has worked injustice to the party appealing (Troy & Boston R. Co. *v.* Northern Turnpike Co. 16 Barb. 100; N. Y. Cent. R. Co. *v.* Marvin, 1 Kern. 276; Troy & Boston R. Co. *v.* Lee, 13 Barb. 169). *It seems*, that the relation of cousin existing between the wife of one of the commissioners and a stockholder in the company, is not such an affinity as to vitiate the report,—no unfairness or injustice being complained of (Albany Northern R. Co. *v.* Cramer, 7 How. Pr. 164).

What may be reviewed on appeal. On an appeal from the report under section eighteen (Laws 1850), the court can only look at the matter contained in the report as the foundation of any order to be made upon the appeal. The appeal is a review merely of the proceedings and decisions of the commissioners, and if they are erroneous or illegal, or if it appears that injustice has been done to the party appealing, a new appraisal will be ordered. No affidavits or further evidence will be received (N. Y. & Erie R. Co. *v.* Corey, 5 How. Pr. 177; N. Y. & Erie R. Co. *v.* Coburn, 6 How. Pr. 223).

(*d*) **Appeal to be heard, where.** The provision of the Code (§ 11 subd. 3), allowing an appeal from "a final order affecting a substantial right made in a special proceeding," must be taken as modified by the Laws of 1850, chap. 140, § 18. The appeal to the Supreme Court from the appraisal and report of the commissioners is authorized to be heard either at general or special term. This provision seems to indicate that an appeal to the Court of Appeals was not in any case contemplated by the legislature, because no such appeal would lie from a decision made at the special term. No appeal can be taken from the decision of the general term, since that would be holding the decision of a single judge more reliable than the decision of the three judges at

general term, on the same question (N. Y. Cent. R. Co. *v.* Marwin, 1 Kern. 276).

(*e*) **"May" not to be construed "shall".** The language is not imperative, and a second appraisal cannot be claimed as a matter of right (N. Y. & Erie R. Co. *v.* Coburn, 6 How. Pr. 223).

Amended report. Where, by an order of the court, the commissioners are permitted to amend or correct their report, so that it shall conform to the true state of facts, they have no right at the time of such correction to hear proofs by claimants as to damages (N. Y. & Erie R. Co. *v.* Corey, 5 How. Pr. 177).

(*f*) **Second appraisal.** Where an increased compensation is awarded by the commissioners on a second appraisal, the company cannot avoid payment of the same on the ground that subsequently to the first appraisal the route of the road has been so changed, that the said lands are no longer required for the track (Crowner *v.* Watertown & Rome R. Co. 9 How. Pr. 457).

Conflicting claims to compensation, how determined.—If there are adverse and conflicting claimants to the money, or any part of it, to be paid as compensation for the real estate taken, the court may direct the money to be paid into the said court by the company, and may determine who is entitled to the same, and direct to whom the same shall be paid; and may, in its discretion, order a reference to ascertain the facts on which such determination and order are to be made. (Laws 1850, chap. 140, § 19.)

The court to have power to carry proceedings into effect.—In all cases of appraisal under this act and the act hereby amended (*a*), where the mode or manner of conducting all or any of the proceedings to the appraisal and the proceedings consequent thereon, are not expressly provided for by the statute, the courts before whom such proceedings may be pending shall have power to make all the necessary orders and give the proper directions to carry into effect the

object and intent of this and the aforesaid act; and the practice in such cases shall conform as near as may be to the ordinary practice in such courts. (Laws 1854, chap. 282, § 5.)

(*a*) Laws 1850, chap. 140.

Court to have power to amend proceedings.*—The court shall also have power at any time to amend any defect or informality in any of the special proceedings authorized by this act, as may be necessary; or to cause new parties to be added, and to direct such further notices to be given, to any party in interest, as it deems proper; and also to appoint other commissioners in place of any who shall die, or refuse, or neglect to serve, or be incapable of serving. (Laws 1850, chap. 140, § 20.)

Proceedings to correct defective title, and to acquire additional real estate.—If, at any time after an attempt to acquire title by appraisal of damages or otherwise (*a*), it shall be found that the title thereby attempted to be acquired is defective (*b*), the company may proceed anew to acquire or perfect such title, in the same manner as if no appraisal had been made; and, at any stage of such new proceedings, the court may authorize the corporation, if in possession, to continue in possession, and, if not in possession, to take possession, and use such real estate during the pendency and until the final conclusion of such new

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* The omitted portion of the section has reference to the duty of the court to appoint some competent attorney to appear for and protect the rights of any party in interest who is unknown, or whose residence is unknown, and who has not appeared in the proceedings by an attorney or agent. *Vide*, under same general head, *ante*, p. 72.

proceedings; and may stay all actions or proceedings against the company on account thereof, on such company paying into court a sufficient sum, or giving security, as the court may direct, to pay the compensation therefor when finally ascertained; and in every such case, the party interested in such real estate may conduct the proceedings to a conclusion, if the company delays or omits to prosecute the same.

And if, at any time after the construction of any railroad operated by steam by any company now existing, or that may hereafter be created, such company, or any company owning, operating or leasing such railroad, shall require for the purposes of its incorporation or for the purpose of running or operating any railroad so owned or leased by such company, any real estate in addition to what it has already acquired, or shall require any further right to lands or the use of lands for switches, turnouts, or for the flow of water occasioned by railroad embankments or structures now in use or hereafter rendered necessary, or for any other purpose necessary to the operation of such railroad; or any right to take and convey water from any spring, pond, creek or river, to such railroad, for the uses and purposes thereof, together with the right to build or lay aqueducts or pipes for the purpose of conveying such water, and to take up, relay and repair the same; or any right of way required for carrying away or diverting any waters, streams or floods from such railroad, for the purpose of protecting the same, or for the purpose of preventing any embankment, excavation, or structure of such railroad from injuring or damaging the property of any person or parties who may be rendered liable to injury by reason of such embankment, excavation or structure, as the same may have been constructed previous to such time, or may then exist:

such company may acquire such additional real estate, or any property or real estate which they now use or occupy or right of way, or other rights hereinbefore specified, by purchasing the same of the person or parties owning the same or interested therein, or to be affected thereby, and by paying to such parties such damages as they may sustain by reason thereof, if the amount of such compensation or damages can be agreed upon between such company and such person or parties; and if such company shall, for any cause, be unable to agree for the purchase of such real estate or right of way, or other rights, or shall be unable to agree upon the sum which shall be paid to such persons or parties in satisfaction of the damages they may sustain, or if the title to any such real estate or right of way, or other rights already acquired or attempted to be acquired, shall, for any cause, prove defective or imperfect, then, and in every such case, such company may proceed to acquire or perfect title to such real estate or right of way, or other rights, and to ascertain and appraise such damages in the manner and by the proceedings hereinbefore in this act prescribed. Nothing in this act contained shall authorize the taking of any waters that shall at the time of such taking be commonly used for domestic, agricultural, or manufacturing purposes, to such an extent as to injuriously interfere with such use in the future. (Laws 1850, chap. 140, § 21; Am'd Laws 1869, chap. 237, § 1.)

(*a*) **Application of the section.** This section applies to cases where the title is attempted to be procured by agreement, and purchase, as well as to those cases where it is attempted to be acquired by appraisal (Matter of the New York Cent. R. Co. 20 Barb. 419).

(*b*) **What deemed a defective title.** A mortgage, the existence of which is a lien on the real estate taken and used by the company for the purposes of its incorporation, is one of the defects in the title to

such land, contemplated in the above section, And the railroad company is not bound to wait until the mortgage is foreclosed, and the land sold under the decree, but may proceed immediately, whenever the existence of such incumbrance is discovered, and on complying with the above provisions, may have the lien extinguished as to its property (Matter of the New York Central R. Co. *supra*). Due compensation for such lands would be the payment of their value at the time of the company's entry thereon, with interest (Dows *v.* Congdon, 16 How. Pr. 571).

Defective title, how cured before act of 1850. The act of 1847 (Laws 1847, chap. 272, § 1), authorized the railroad company, in any case where it had not acquired a valid and sufficient title to any lands upon which it had constructed its tracks, or where the title to any such lands had been or should be thereafter rendered invalid by reason of any mortgage, judgment, or other lien, affecting the same, then, and in either case, to obtain and acquire title to the said land, by purchase of the persons, bodies corporate or politic owning the same, or having an interest therein, if such purchase could be effected by agreement between the owners thereof and such company; but if not, then the company had the power to cause compensation to be made therefor, and for that purpose it should present a petition to a court of record in the county in which such land lay, setting forth the failure of such title, and the manner in which such failure occurred, and the name and residence of the owner or claimants, and praying for the drawing of a jury to determine the compensation to be made therefor. The said court should thereupon direct notice to be given in writing to the owners or claimants of such lands, of the time and place of the drawing of such jury, which drawing should be in the county in which such lands were situated, and upon proof of the service of such notice and hearing, the parties who might attend such court of record should cause such jury to be drawn in such manner and at such place as it should direct; said court should prescribe the time and place of the meeting of said jury, and the notices to be given to the owners or claimants of the proceedings before said jury. The said jury should view the premises for which compensation was to be made, and should, without fear, favor, or partiality, determine the compensation to be made for said lands, and might hear and examine witnesses on oath in relation to the same. The said jury should make an inquisition of their appraisement or assessment, and should cause the same to be filed in the office of the clerk of the county in which such lands were situated. Upon proof to the court within thirty days after the filing of the inquisition of the jury, of payment to the owner or claimant, or of depositing to his or their credit in such bank as the said court shall direct, of the amount of such appraisement, and of all the costs and expenses attending it, including reasonable counsel fees (to be taxed and certified by said court), the said court should make an order describing the lands and reciting the assessment or appraisement thereof,

and the mode of making it, which order should be recorded in the office of the clerk of the county in which the lands were situated, in like manner as if the same were a deed of conveyance, and the railroad company should thereupon become possessed of such land during the continuance of the corporation, and might use the same for the purposes of such corporation.

Proceedings to acquire special estate.— Whenever there shall be one or more of the estates enumerated in article one of title two of chapter one of the second part of the Revised Statutes, entitled "Of the creation and division of estates," (*a*) in any land required by any railroad company for the purpose of its incorporation, such company may acquire such estate and land by means of the special proceedings authorized by the act hereby amended. In every such case the railroad company, in addition to the statements now required by said act, shall set forth and state in its petition, the facts in relation to any such estate, and the person, persons or class of persons, then in being or not in being, who are or may become entitled in any contingency, to any estate as aforesaid, in such land, and may pray that such estate may be acquired, and such persons may be bound, by the said proceedings; and thereupon the court to whom such petition is presented, if there be no attorney appearing in their behalf, shall appoint some competent and disinterested attorney or officer of the court to appear in such proceedings and represent the rights, interests and estate of the person, persons or class of persons aforesaid in any such land, and to protect the same, on the appraisal and proceedings aforesaid; and it shall be the duty of the court, on or after the confirmation of the report of appraisal, to ascertatn by such report, or by a reference for that purpose, or otherwise in its discretion, the rights, interest and estate of such person, persons or

class of persons, in the land so appraised, and in the compensation awarded therefor, and to make an order determining the amount or share of such compensation to which such person, persons or class of persons are or may become entitled on account of such estate, as the same shall arise or become vested in them respectively, and to direct, and to provide for the payment, investment or securing thereof, for the benefit of the person, persons or class of persons aforesaid, who are, or may in the contingency upon which such estate arises become, entitled thereto; upon the company paying or securing such amount or share, in the manner directed by such order of the court, it shall be deemed to have acquired, and shall be vested with the estate which such person, persons or class of persons have or may be entitled to in said land, and they shall be barred of and from all right or claim in and to such land. Any railroad corporation in this state may acquire the title in fee, by the special proceedings, hereinbefore mentioned, to any land which it may require for roadway and for necessary buildings, depots and freight grounds. (Laws 1857, chap. 444, § 2.)

(*a*) **Enumeration of estates.**—The enumeration of estates, here referred to, are: estates of inheritance, estates for life, estates for years, and estates at will and by sufferance. Section five of the same article provides that estates of inheritance and for life, shall be denominated estates of freehold; estates for years, shall be chattels real; and estates at will or by sufferance shall be chattel interests, but shall not be liable as such to sale on execution. Section seven classifies estates as respects the time of their enjoyment, into estates in possession and estates in expectancy.

Proceedings to acquire title, when trustee &c. is not authorized to sell.—In case any title or interest in real estate required by any company formed under this act, for the purpose of its incorporation, shall be vested in any trustee not authorized to sell, re-

lease and convey the same, or in any infant, idiot or person of unsound mind, the supreme court shall have power, by a summary proceeding on petition, to authorize and empower such trustee, or the general guardian or committee of such infant, idiot or person of unsound mind, to sell and convey the same to such company, for the purposes of its incorporation, on such terms as may be just; and in case any such infant, idiot or person of unsound mind, has no general guardian or committee, the said court may appoint a special guardian or committee for the purpose of making such sale, release or conveyance, and may require such security from such general or special guardian or committee as said court may deem proper. But before any conveyance or release authorized by this section shall be executed, the terms on which the same is to be executed shall be reported to the court, on oath; and if the court is satisfied that such terms are just to the party interested in such real estate, the court shall confirm the report, and direct the proper conveyance or release to be executed, which shall have the same effect as if executed by an owner of said land, having legal power to sell and convey the same. (Laws 1850, chap. 140, § 26.)

Proceedings to acquire title to lands constituting a public square, for the construction of a railroad, across the same, should be brought under the provisions of this section (Anderson *v.* Rochester, Lockport &c. R. Co., 9 How. Pr. 553).

Titles to state lands, how acquired.—The commissioners of the land office shall have power to grant to any railroad company formed under this act, any land belonging to the people of this state, which may be required for the purposes of their road, on such terms as may be agreed on by them; or such company may acquire title thereto by appraisal, as in the case of

lands owned by individuals; and if any land belonging to a county or town is required by any company for the purposes of the road, the county or town officers having the charge of such land may grant such land to such company, for such compensation as may be agreed upon. (Laws 1850, chap. 140, § 25.)

Public lands. The navigable rivers of this state belong to the people thereof, and the riparian owner has no private property either in the waters of such rivers or in the strip of land between high and low water mark. Such strip of land below high water mark may therefore be taken for a public use, without making compensation to the riparian owner, even though communication between his land and the river is thereby cut off (Gould *v.* Hudson River R. Co., 6 N. Y. 522; affirming s. c. 12 Barb. 616).

Salt lands.—Whenever it shall be necessary for any railroad company to occupy any of the salt lands belonging to this state for the use of their road, the same shall be appraised in the manner provided for in the second section of this act, and when they shall pay into the treasury of this state, the said appraised value, they shall become possessed of the same to the same extent as by their charter they are authorized to become possessed of land belonging to individuals. (Laws 1848, chap. 346, § 7.)

The appropriation of such part of the salt lands, for railroad purposes, as is provided for in the above section, upon appraisal and payment of damages to the state, is not a *sale* within the intent of the constitutional prohibition in reference to such lands (Parmelee *v.* Oswego &c. R. Co., 7 Barb. 599; affirmed on other grounds, 6 N. Y. 74).

Title to Indian lands, how acquired.—It shall be lawful for any railroad company that has been, or may hereafter be chartered by the legislature of this state, to contract with the chiefs of any nation of Indians, over whose lands it may be necessary to construct such

railroad, for the right to make such road upon lands; but no such contract shall vest in such railroad company the fee to such lands, nor the right to occupy the same for any purposes other than what may be necessary for the construction, occupancy and maintenance of such railroad. (Laws 1836, chap. 36, § 1.)

Same.—No contract made with the chiefs of any nation of Indians, for the purposes mentioned in the first section of this act, shall be valid or effectual, until the same shall be ratified by the Court of Common Pleas of the county where such land may be situated. (Laws 1836, chap. 316, § 2.)

County courts have original jurisdiction to exercise all the powers and jurisdiction conferred upon the late courts of common pleas of the county, respecting the laying out of railroads through Indian lands (Code, § 30, subd. 11). Although the fee to the land so acquired, is not vested in the company, yet it is "owned" by the company within the contemplation of the provisions of the Revised Statutes regarding taxation, and may be assessed as property occupied by the railroad in the town in which it is situated (The People *ex rel.* Erie R. Co. *v.* Beardsley, 52 Barb. 105).

Title of the United States to certain lands, not affected by railroad privileges.—Any right, title or privilege heretofore granted, or which may hereafter be granted by the United (*sic*) authorities to any railroad company to cross or occupy any portion of the fortification grounds in the city of Oswego, for road tracks or any railroad purpose connected therewith, shall not impair or invalidate any of the rights, titles or privileges given to the United States by an act entitled, "an Act to cede the jurisdiction of certain lands near the mouth of the Oswego river, New York, to the United States," passed April 25, 1839. (Laws 1870, chap. 70, § 1.)

IX.

OF THE CONSTRUCTION OF ROAD.

Map and profile of land taken for railroad.—Every corporation shall, within a reasonable time after their road shall be constructed, cause to be made:

A map and profile thereof, and of the land taken or obtained for the use thereof, and file the same in the office of the state engineer and surveyor; and also like maps of the parts thereof located in different counties, and file the same in the offices for recording deeds, in the county in which such parts of said road shall be. Every such map shall be drawn on a scale, and on paper, to be designated by the state engineer and surveyor, and certified and signed by the president or engineer of such corporation. (Laws 1850, chap. 140, § 45.)

It is also the duty of each corporation to transmit to the state engineer and surveyor the following maps, profiles and drawings exhibiting the characteristics of its roads: the map to show the length and direction of each straight line, and the length and radius of each curve; also, the point of crossing of each town and county line, and the length of line in each town and county accurately determined by measurements to be taken after the completion of the road. The profile to be on the map, and shall show the grade line and surface of ground in the usual method, also the elevation of grades above tides at each change in the inclination thereof. The maps and profile to be made on a scale of five hundred feet to one-tenth of a foot; verticle scale of profile to be one hundred feet to one-tenth of a foot. For all roads now in progress, or which may hereafter be constructed the said maps shall be returned within three months after the same or any portion thereof shall be in use. (Laws 1850, chap. 140, § 31, subd 39.) By a previous act (Laws 1838, chap. 161), every incorporated railroad, canal and bridge company, was required to deposit with the comptroller in the canal room, accurate drawings of the plans and specifications of the mechanical work thereafter to be constructed.

by such company, to be drawn on a scale, and on paper to be designated by the Board of Canal Commissioners, or by such other board of public works as might thereafter be organized by the legislature (*Id.* § 1). A map and profile of the railroad &c. were in like manner to be drawn and deposited (*Id.* § 2). By the laws of 1840 (chap. 259, § 2), it was provided that every railroad company in this state, to which the credit of the state had been loaned, or which might thereafter ask the aid of the state, should so far as might be in its power, without making a new survey, furnish to the Surveyor-general, copies of all maps, plans, drawings, levels and surveys of every description, made in connection with the construction of its railroad.

Width of road.—Every corporation formed under this act shall, in addition to the powers conferred on corporations in the third title of the eighteenth chapter of the first part of the Revised Statutes, have power,

To lay out its road not exceeding six rods in width, and to construct the same; and for the purposes of cuttings and embankments, to take as much more land as may be necessary for the proper construction and security of the road, and to cut down any standing trees that may be in danger of falling on the road, making compensation therefor as provided in this act for lands taken for the use of the company. (Laws 1850, chap. 140, § 28, subd. 4.)

Companies may construct road of narrow gauge.—Any railroad corporation, now duly organized and legally kept in existence, which has not constructed its railroad, may construct a railroad of the gauge hereinbefore mentioned (*a*), and may acquire title to lands necessary for the construction, maintenance and operating of such railroad on complying with the provisions of this act, and all other provisions of law not inconsistent herewith. (Laws 1871, chap. 560, § 7.)

(*a*) A guage of three feet and six inches or less, but not less than thirty inches. The organization of companies using such narrow guage, is pro-

vided for in section five, of chapter five hundred and sixty, of the laws of eighteen hundred and seventy-one.

Weight of rail to be used.—Every railroad, the track of which shall hereafter be constructed or relaid in whole or in part, the rail laid down shall be of iron and at least fifty-six pounds weight to every lineal yard, and for the purpose of enabling the companies owning such tracks, or authorized to construct a railroad track, to comply with the provisions of this section, they are hereby authorized to increase their capital stock or borrow money upon the security of their road, its appurtenances and franchises, according to the provisions of the first section of this act (*a*), but nothing herein contained shall be so construed as to authorize the increase of capital or the borrowing of money for any other purpose. (Laws 1847, chap. 272, § 5.)

(*a*) By the laws of 1847 (chapter 272, § 1), any railroad company using steam power in propelling its cars, whose track was then laid in whole, or in part with the flat bar rail, was authorized to substitute upon its track or tracks the heavy iron rail, weighing fifty-six pounds to the lineal yard, and to increase its capital stock, or borrow money upon the security of its road &c. as the directors of such company might determine, subject to all previous incumbrances to the state or individuals, to an amount sufficient to accomplish such end: *Provided*, that no increase of capital or indebtedness on the part of said company should exceed in the aggregate the sum of $10,000 per mile for each mile of the entire length of its railroad. Section two of this act provided penalties for certain railroads who should within given times neglect to substitute the heavy iron rails for the flat bar rail, then in use (Laws 1847, chap. 272, § 2). During the same year it was further enacted, that if the directors of such company should deem it advisable to lay a second track, the same should be laid with the heavy iron rail, and for such purpose the company were authorized to increase its capital stock, or to borrow money on its railroad &c. (Laws 1847, chap. 405, § 1.)

Weight of rail, to be increased, when.—No company formed under this act shall lay down or use in the construction of their road any iron rail of less

weight than fifty-six pounds to the lineal yard on grades of one hundred and ten feet to the mile or under, and not less than seventy pounds to the lineal yard on grades of over one hundred and ten feet to the mile, except for turn-outs, sidings and switches, provided this section shall apply only to roads now being constructed or hereafter to be constructed, when the gauge of said road exceeds four feet or over. (Laws 1850, chap. 140, § 27; Am'd Laws 1862, chap. 449, § 1; Am'd Laws 1871, chap. 669, § 1.)

The company is liable for negligence in using defective ties, or in laying its rails in such a manner that within the ordinary extremes of cold and heat, they expand so as to be pressed out of place (Reed *v.* N. Y. Cent. R. Co., 56 N. Y. 493). And where it appeared that the contraction and expansion of rails, of the length of those used, between the ordinary extremes of heat and cold was from three-eighths to one-half an inch in each bar, and that the rails upon the defendant's road were laid with spaces of not more than one quarter of an inch between them, *held* that the jury were authorized to find that the rails were negligently laid (*Id*). The rule that a carrier must provide roadworthy vehicles, applies to railroad companies in such manner as to require them to provide a track worthy of the vehicle (McPadden *v.* N. Y. Cent. R. Co., 47 Barb. 247). The company is bound to lay and maintain its track properly, and where the accident occurred from a broken rail, the fact whether the rail was in sound condition at the time the train came upon it, is to be determined by the jury (*Id*). The company is liable, where by the sinking of the pavement in the street, a spike in the rail was left exposed, in consequence of which the plaintiff driving along the track was thrown from his carriage and injured (Fash *v.* Third Ave. R. Co., 1 Daly, 148), and this, though there was room in other parts of the street, for the plaintiff to have passed (*Id*). But there must be proof of negligence and want of care in constructing and maintaining the track, before the company can be held liable (Manzetti *v.* N. Y. Cent. R. Co., 3 E. D. Smith, 98); thus, where the train was thrown from the track by the act of some unknown person, who shortly before the passage of the train drew the spikes which fastened the rails, the company is not liable for the consequences of such culpable act (Deyo *v.* same, 34 N. Y. 9; 39 N Y. 227; 35 B. 38). In an action for damages for an injury alleged to have been occasioned by the bad condition of the road, the declarations of the engineer of the company, made while actually engaged upon the work, and in respect to its proper construction, are part of the *res gestæ* (Brehm *v.* Great Western R. Co., 34 Barb. 250). Evidence of the bad condition of the road beyond

the place where the accident occurred is also admissible (Reed *v.* N. Y. Cent. R. Co., *supra*). The company cannot abandon or discontinue the use of a part of its road, and the people through their Attorney general, can compel the company to repair and operate the same (The People *v.* Albany & Vermont R. Co., 19 How. Pr. 523; 11 Abb. Pr. 136).

Railroad fences; farm crossings; cattle guards.—Every corporation formed under this act, shall erect and maintain fences on the sides of their road, of the height and strength of a division fence required by law (*a*), with openings or gates or bars therein, and farm crossings (*b*) of the road for the use of the proprietors of lands adjoining such railroad; and also construct and maintain cattle guards (*c*) at all road crossings, suitable and sufficient to prevent cattle and animals from getting on to the railroad. Until such fences and cattle guards shall be duly made, the corporation and its agents shall be liable for all damages which shall be done by their agents or engines, to cattle, horses, or other animals thereon; and after such fences and guards shall be duly made and maintained (*d*), the corporation shall not be liable for any such damages, unless negligently or willfully done; and if any person shall ride, lead, or drive any horse or other animal upon such road, and within such fences and guards, other than at farm crossings, without the consent of the corporation, he shall, for every such offense, forfeit a sum not exceeding ten dollars, and shall also pay all damages which shall be sustained thereby to the party aggrieved. It shall not be lawful for any person, other than those connected with or employed upon the railroad, to walk along the track or tracks of any railroad, except where the same shall be laid along public roads or streets. (Laws 1850, chap. 140, § 44.)

The provisions of this section apply to all railroad corporations in the state, whether then existing or thereafter to be formed, and whether created by special act, or organized under the general law (Staats *v.* Hudson River R. Co. 3 Keyes, 196; s. c. 33 How. Pr. 139), and to foreign as well as domestic ones (Labussiere *v.* N. Y. & New Haven R. Co. 10 Abb. Pr. 398; to the contrary, Schanchan *v.* Same, *Id.* 398). See Laws 1854, chap. 282, § 8, *seq.*

(*a*) **Requisites of fence.** A zigzag fence, the angles of which project alternately upon the company's land, and then upon the land adjoining the same, may be erected as a division fence, and is a fence *on the sides* of the railroad, within the meaning of the statute. The company, in erecting such fence, does not commit trespass upon the land of the adjoining owner (Ferris *v.* Van Buskirk, 18 Barb. 397). Each town, at its annual meeting, may prescribe what shall be deemed a sufficient fence in such town (1 Rev. Stat. 341, § 5, subd. 11). A sufficient post and wire fence of requisite height is a lawful fence (Laws 1854, chap. 282, § 8). It must be a *substantial* fence (Corwin *v.* Erie R. Co. 13 N. Y. 54); such a one that will keep horses and cattle which are orderly from getting on the track (Tallman *v.* Syracuse &c. R. Co. 4 Keyes, 128); but no question can arise as to the height or strength of the fencing demanded of the railroad under this section, in a case where no fence at all was erected (*Id*).

In Tonawanda R. Co. *v.* Munger (5 Denio, 255), it was held that the provisions of the Revised Statutes, authorizing towns to prescribe what should be a sufficient fence, did not apply to lands owned by a railroad company, and used as a railroad track. There was no provision, however, in the plaintiff's charter (Laws 1832, p. 427, chap. 241) relating to fencing, and the action was tried some six years previous to the passage of the section under consideration. A railroad company, running its cars over a track, not its own, but which was constructed for its use by a company running no cars of its own, is liable for injury from its train, resulting from want of fences along such track (Tracy *v.* Troy & Boston R. Co. 38 N. Y. 33). The latter part of section eight of chap. 282, of the laws of 1854, probably refers to rivers or lakes through whose borders the railroad might run, or where high rocks or other obstructions would render it unnecessary to fence against cattle (Shepard *v.* Buffalo &c. R. Co. 35 N. Y. 641).

(*b*) **Farm crossings.** No distinction is intended to be made, in respect to the duty of the company to construct farm crossings &c. between cases where the lands occupied by the railroad, were obtained by agreement with, and conveyance from the owners, and where title was acquired by the special proceedings provided for in case of disagreement (Clarke *v.* Rochester &c. R. Co. 18 Barb. 350). If there is any limitation as to the duty of the company to make such crossings, it is that they must be useful (*Id*). The term "farm crossing," as used in the statute, does not necessarily mean passing over, and if the corporation so con-

struct their road as to render a passage over it, to or from the land from which it has been severed inconvenient or impracticable, they are bound to furnish one under it, however expensive they may find it (Wheeler *v.* Rochester & Syracuse R. Co. 12 Barb. 227). In this case the defendants procured an appraisal of the lands of the plaintiff taken by them for their railroad. At the time of the appraisal, there had been no agreement in reference to the farm crossing, nor any location of it, further than that the plaintiff, in the presence of the agent of the railroad, and the commissioners, pointed out where he wished it to be made, and no objection was then raised on the part of the company. But on the title of the company being perfected, they proceeded to construct their road, along an embankment, locating the crossing at a different point from that indicated by the plaintiff, and greatly to his detriment. *Held*, that an injunction would issue restraining the defendants from constructing their road through the farm, until they should either provide a suitable crossing at the place selected by the plaintiff, or compensate him for the inconvenience he might sustain from the difference in location (*Id*). But where the plaintiff sold to the railroad company, for the purposes of their track, a strip of land running through his village lot, without reserving the right of crossing the same, and they erected an embankment thereon, which rendered the passage from one portion of said lot to another difficult and inconvenient, but it was shown that the unsold portion of the lot was of small value, while the cost of constructing a crossing would greatly exceed the value thereof to the plaintiff, and no special circumstances appeared in regard to the manner of using the land, rendering a crossing necessary: *Held*, that this was not a case in which the court ought to adjudge a specific performance, by the company, of the duty imposed on them, but that the plaintiff should be left to his remedy for damages (Clarke *v.* Rochester &c. R. Co. *supra*).

(*e*) **Cattle guards.** Cattle guards must be kept at *all road crossings*; and the fact that the road crossing is in the vicinity of the railroad depot, will not excuse the company from complying with the positive requirements of the statute, although it would be more convenient if such cattle guards were not kept there (Bradley *v.* Buffalo, New York &c. R. Co. 34 N. Y. 427). This provision, however, does not extend to *farm crossings*, or other private ways (Brooks *v.* N. Y. & Erie R. Co. 13 Barb. 594); nor to the streets of large towns (Bowman *v.* Troy & Boston R. Co. 37 Barb. 516; Vandekar *v.* Rensselaer &c. R. Co. 13 Barb. 390; Parker *v.* Same, 16 Barb. 315; Halloran *v.* N. Y. & Harlem R. Co. 2 E. D. Smith, 257); but cattle guards are to be maintained at the crossings of village streets, where they can be erected on the company's land (Brace *v.* N. Y. Cent. R. Co. 27 N. Y. 269); though not, however, where the track, running through one street, is crossed by another street, in such a manner that the construction and maintenance of cattle guards would necessarily obstruct the use of either street (*Id.*; Halloran *v.* N. Y. & Harlem R. Co. *supra*).

(*d*) **Fences and cattle guards must be maintained.** The fences and cattle guards must be maintained. This duty to keep in repair requires vigilance to ascertain defects, and energetic application of the means necessary to make the repairs, as soon as the defects are discovered (Murray *v.* N. Y. Cent. R. Co. 4 Keyes, 274), and where a breach is made in the fence or cattle guard, and suffered to remain an unreasonable length of time, the company is absolutely liable for injuries to cattle entering through the gap (McDowell *v.* N. Y. Cent. R. Co. 37 Barb. 195). And the fact that the gap was made by a trespasser will not excuse the company (Munch *v.* N. Y. Cent. R. Co. 29 Barb. 647), nor does it make any difference that the agent of the company was ignorant of such defect (*Id*). The intention of the legislature is to impose an absolute liability upon the company so neglecting, without reference to mere negligence on the part of the owner of cattle (Corwin *v.* N. Y. & Erie R. Co. 13 N. Y. 42; overruling, Marsh *v.* N. Y. & Erie, 14 Barb. 364, where negligence of the owner was held a defence). The whole duty of erecting fences rests upon the company, and the statute does not authorize the landowner to construct the fence, if the railroad company neglect or refuse so to do, and recover of the road therefor (Shepard *v.* Buffalo &c. R. Co. 35 N. Y. 641).

Notice of defects to be given to company. Although the statute imposes the absolute liability of maintaining fences &c. upon the corporation, yet it is the duty of every proprietor along the road, to make reasonable efforts to apprise the company of any defects therein, which have come to his actual notice, and a failure to do so, bars his recovery for damages which he may sustain by reason of such defects. The relative obligation of the parties in this respect is a question for the jury to decide (Poler *v.* N. Y. Cent. R. Co. 16 N. Y. 476).

Liability of the company under the section. After the requisite fences and cattle guards have been duly made and maintained, the railroad company is no longer absolutely liable for all damages to stray animals, but can be charged with liability for injury, only upon the ground of negligence. And a person sustaining such damages by reason of the negligence of the corporation, cannot recover if his own negligence in any way contributed in causing it (Hance *v.* Cayuga & Susquehanna R. Co. 26 N. Y. 428). The provision that when the fences and cattle guards are not in good repair the company shall be liable for damages (Laws 1854, chap. 282, § 8), must not be construed literally, since such construction would exclude every consideration of negligence, and would render the company liable in every conceivable case where their fences were not at the time of the injury in proper repair (Murray *v.* N. Y. Cent. R. Co. 4 Keyes, 274). The corporation is liable only for animals entering upon the track at a place which the company is bound to fence, and the fact that a portion of the fence is defective, is immaterial where the animal entered at another place (Brooks *v.* N. Y. & Erie R. Co. 13 Barb. 594). If the fence is for the most part maintained, but is de-

fective in a particular place, the owner of the injured cattle must offer proof that they entered through such defective part (Morrison *v.* N. Y. & New Haven R. Co. 32 Barb. 568). Such evidence that the animal entered upon the railroad track, over or through a fence which the company was bound to maintain, should be submitted to the jury; but not so evidence that possibly the animal entered through the breach. The plaintiff should be non-suited, where there is no evidence that the animal escaped upon the track in the manner alleged (*Id*). And where the fence or cattle guard is so buried in snow, that cattle may pass over it, the company is liable upon proof of its negligence in leaving the fence in that condition, but not otherwise (Hance *v.* Cayuga &c. R. Co. *supra*); nor even then, if the plaintiff's fault contributed to the injury (*Id*). The company is absolutely liable for injuries to cattle entering upon the track through a defect in the fence or cattle guard, which it has neglected to repair (McDowell *v.* N. Y. Cent. R. Co. 37 Barb. 195), even where such defect was the act of a trespasser (Munch *v.* N. Y. Cent. R. Co. 29 Barb. 647). The statute imposes an absolute liability upon the company (Corwin *v.* N. Y. & Erie R. Co. 13 N. Y. 42; Shepard *v.* Buffalo &c. R. Co. 35 N. Y. 641); and this without reference to mere negligence on the part of the owner of the animals (*Id.*; overruling, Marsh *v.* N. Y. & Erie R. Co. 14 Barb. 364). It is no excuse that the plaintiff was guilty of negligence in turning his cattle into a field where he knew there was no fence (Shepard *v.* Buffalo &c. R. Co. *supra*). These requirements of the statute are by no means the measure of the company's care or conduct in the transportation of passengers. The railroad must comply with these provisions, but it cannot therefor neglect other necessary and proper precautions (Brown *v.* N. Y. Cent. R. Co. 34 N. Y. 404).

Company not liable, when. The company is not liable for injuries to animals resulting from their entering upon the track through a gate left open without the fault of the company, at a part of the road properly fenced and guarded, although another portion of the road is not fenced (Brooks *v.* N. Y. & Erie R. Co. 13 Barb. 594); nor are the cattle of a stranger trespassing upon the premises of the adjoining owner, within the protection of this section of the act (*Id*). But it seems that all animals are to be deemed lawfully on the highway, in an action to recover for an injury from want of cattle guards (*Id*). One who willfully turns his cattle upon the track cannot recover damages for their loss (*Id.*; Corwin *v.* N. Y. & Erie R. Co. 13 N. Y. 42; Shepard *v.* Buffalo &c. R. Co. 35 N. Y. 641); but the owner of cattle is not deprived of the benefit of the statute by his pasturing cattle in a field of his own, adjoining the railroad, although he knows it to be unfenced (Shepard *v.* Buffalo &c. R. Co. *supra*). The company is under no obligation, as to its servants, to erect and maintain fences on the sides of the road, so as to render the company liable for injuries to its own servants, in consequence of its omission to fence (Langlois *v.* Buffalo &c. R. Co. 19 Barb. 364). Under a plea that the injury complained of, was occasioned by the neglect of

the company to construct cattle guards, only, a recovery cannot be had for an omission to build fences (Parker *v.* Rensselaer &c. R. Co. 16 Barb. 315).

Liability of its agents. Under a similar section of the general railroad laws of 1848 (Laws 1848, ch. 140, § 46), it was *held*, that both the engineer who runs the locomotive, and the fireman in his employ, who manages the brakes under his direction, are agents of the railroad company within the meaning of the section, and are jointly or severally liable with the company for the consequences of their negligence in running the train (Suydam *v.* Moore, 8 Barb. 358).

For whose benefit this section was enacted. Statutes concerning fences are enacted not only for the benefit of owners or occupants of land, but for all owners of animals contiguous to the road (Corwin *v.* N. Y. & Erie R. Co. 13 N. Y. 42), and for the protection of the traveling public (*Id.*; Shepard *v.* Buffalo &c. R. Co. 35 N. Y. 641; Suydam *v.* Moore, 8 Barb. 358; Walton *v.* Rensselaer & Saratoga R. Co. *Id.*; 390; Staats *v.* Hudson River R. Co. 3 Keyes, 196; s. c. 33 How. Pr. 139; Tracy *v.* Troy & Boston R. Co. 38 N. Y. 433; also see Brace *v.* N. Y. Cent. R. Co. 27 N. Y. 269), and as well for the agents and servants of the railroad company as for the public (Langlois *v.* Buffalo &c. R. Co. 19 Barb. 364). But in the absence of a legislative provision making the erection of the fences &c. an absolute duty to the public, the courts cannot properly impose such erection as a duty, and hold its non-performance to be negligence *per se*, disregarding all other circumstances. The liability prescribed by the section is all that is incurred by a violation of the provisions (*Id*).

Provision extended to embrace every railroad company.—Every railroad corporation, whose line of road is open for use, shall, within three months after the passage of this act, and every railroad company formed or to be formed, but whose lines are not now open for use, shall, before the lines of such railroad are opened, erect and thereafter maintain fences on the side of their roads, of the height and strength of a division fence, as required by law, with openings or gates or bars therein at the farm crossings of such railroad, for the use of the proprietors of the lands adjoining such railroads, and shall also construct, where the same has not already been done, and hereafter

maintain, cattle guards at all road crossings, suitable and sufficient to prevent cattle, horses, sheep and hogs from getting on to such railroad. And so long as such fences and cattle guards shall not be made, and when not in good repair, such railroad corporation and its agents shall be liable for damages which shall be done by the agents or engines of any such corporation to any cattle, horses, sheep or hogs thereon; and when such fences and guards shall have been duly made, and shall be kept in good repair, such railroad corporation shall not be liable for any such damages, unless negligently or willfully done. A sufficient post and wire fence of requisite height shall be deemed a lawful fence, within the provisions of this section; but no railroad corporation shall be required to fence the sides of its roads, except when such fence is necessary to prevent horses, cattle, sheep and hogs from getting on to the track of the railroad from the lands adjoining the same. (Laws 1854, chap. 282, § 8.)

Land-owner's agreement to erect fence.—But it shall be the duty of every owner of land adjoining any railroad, who has received, or whose grantor has received, a specific sum as compensation for fencing along the line of land taken for the purpose of said railroad, and has agreed to build and maintain a lawful fence on the line of said road, to build and maintain such fence (*a*); and if said owner, his heir or assign, shall not build said fence within thirty days after he has been notified so to do by the said railroad corporation, or shall neglect to maintain said fence, if built, said corporation shall build and thereafter maintain such fence, and may maintain a civil action against the person so neglecting to build or maintain said fence, to recover the expense thereof. (Laws 1854, chap. 282, § 9.)

Agreement need not be in writing. An agreement to erect and maintain a division fence for a valuable consideration, is not, by its terms, an agreement not to be performed within a year; nor is it a special promise to answer for the debt, default, or miscarriage of another. It does not fall within any of the cases where the contract is required to be in writing (Talmadge *v.* Rensselaer & Saratoga R. Co. 13 Barb. 493).

Effect of agreement. Where, after the land-owner had made an oral contract with the railroad company, for a valuable consideration, to maintain the fences along his own land, he neglected the same for a number of years, so that his own cattle entered upon the track through defect in the fences, and were killed: *Held*, that the land-owner could not recover (Talmadge *v.* Rennselaer & Saratoga R. Co. 13 Barb. 493; Duffy *v.* N. Y. & Harlem R. Co. 2 Hilt. 496); nor can a grantee (Terry *v.* N. Y. Central R. Co. 22 Barb. 574), or tenant of such land-owner, maintain an action, under the general railroad act, for injury to animals caused by the insufficiency of such fence (Duffy *v.* N. Y. & Harlem R. Co. *supra*; Tombs *v.* Rochester & Syracuse R. Co. 18 Barb. 583). And where it was the duty of the land-owner, under the conditions upon which the company acquired their title to the land, to maintain fences, it was *held*, upon the fences being destroyed by sparks from the locomotive, that the company were not under such an obligation to rebuild, as to be liable to him for injuries to animals which escaped on to the track. His duty is to replace the fence, and his remedy is by an action for the value of the fence thus destroyed (Terry *v.* N. Y. Cent. R. Co. 22 Barb. 574). But no agreement of a land-owner in relation to fences, is a defence to an action brought by a third person, not claiming under such land-owner (Corwin *v.* N. Y. & Erie R. Co. 13 N. Y. 42). Nor can any railroad company avail itself of such agreement as a defence, other than the company with which it was made, or to which it has been transferred (Shepard *v.* Buffalo &c. R. Co. 35 N. Y. 641). Where the agreement between the owner of land and the railroad company was to the effect that the latter should "construct and maintain good and sufficient fences on each side of the track, and also two crossings for trains," making no provision for gates, the company was not relieved from its statutory obligation to provide gates (Poler *v.* N. Y. Cent. R. Co. 16 N. Y. 476).

Lessees of railroad, to maintain fences.— And when the railroad of any railroad corporation shall be leased to any other railroad company, or to any person or persons, such lessees shall maintain fences on the sides of the road so leased, of the height and strength of a division fence, as required by law, with openings, or gates, or bars therein, at the farm

crossings of such railroad, for the use of the proprietors of the lands adjoining such railroads, and shall also construct, where the same has not already been done, and hereafter maintain cattle-guards at all road crossings, suitable and sufficient to prevent horses, cattle, sheep, and hogs from getting on to such railroad. And so long as such fences and cattle-guards shall not be made, and when not in good repair, such lessees and their agents shall be liable for damages which shall be done by the agents or engineers of any such corporation, to any cattle, horses, sheep, or hogs thereon; and when such fences and guards shall have been duly made, and shall be kept in good repair, such lessee shall not be liable for any such damages, unless negligently or willfully done. A sufficient post and wire fence of requisite height shall be deemed a lawful fence, within the provisions of this section; but no lessees of a railroad corporation shall be required to fence the sides of said roads except when such fence is necessary to prevent horses, cattle, sheep, and hogs from getting on to the track of the railroad, from the lands adjoining the same. (Laws 1864, chap. 582, § 2.)

Sign-boards at railroad crossings.—Every such corporation shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained across each traveled public road or street where the same is crossed by the railroad, on the same level. Said boards shall be elevated so as not to obstruct the travel, and to be easily seen by travelers; and on each side of such boards shall be painted in capital letters, of at least the size of nine inches each, the words, "Railroad crossing, look out for the cars." But this section shall not apply to streets in

cities or villages, unless the corporation shall be required to put up such boards by the officers having charge of such streets. (Laws 1850, chap. 140, § 40.)

The provisions in relation to sounding the bell or whistle of the engine, and putting up boards, require those acts to be done at the crossing of *roads* or *streets*, while the provision as to the construction of cattle-guards is applicable only to *road-crossings;* the statute making a distinction between roads and streets (Vanderkar *v.* Rensselaer & Saratoga R. Co. 13 Barb. 390; Parker *v.* Rensselaer & Saratoga R. Co. 16 Barb. 315). The company is not required to keep a flagman at its crossing of a public street, to notify passers-by of the approach of a train, but where, for its own convenience, it elects to do so, it is guilty of negligence in afterwards withdrawing such flagman without notice (Ernst *v.* Hudson River R. Co. 39 N. Y. 61; s. c. 61 How. Pr. 84).

Railroad buildings for accommodation of passengers and freight.—Every corporation formed under this act shall, in addition to the powers conferred on corporations in the third title of the eighteenth chapter of the first part of the Revised Statutes, have power,

To erect and maintain all necessary and convenient buildings, stations, fixtures, and machinery for the accommodation and use of their passengers, freight, and business. (Laws 1850, chap. 140, § 28, subd. 8.)

All lands acquired by any railroad company by appraisal, for passenger and freight depots, shall be held by such company in fee. (Laws 1854, chap. 282, § 17.)

Construction of railroad near or across canal.—The canal commissioners are hereby invested with a general and supervisory power over so much of any railroad as passes over any canal or feeder belonging to this State, or approaches within ten rods of such canal or feeder, so far as such power may be necessary to preserve the free and perfect use of the

canals or feeders of this State, and necessary for making any repairs, improvements or alterations in the same; and said company shall not construct their railroad over or at any place within ten rods of any canal or feeder belonging to this State, unless said company shall lay before the commissioners aforesaid, a map, plan and profile, as well of the canal or feeder as of the route designated for their railroad, exhibiting distinctly and accurately the relations of each to the other, at all the places within the limits of ten rods as aforesaid; and shall thereupon obtain the written permission of said canal commissioners, with such conditions, instructions and limitations as, in the judgment of said canal commissioners, the free and perfect use of any such canal or feeder may require. (Laws 1834, chap. 276, § 17.)

Change of grade of track, crossing canal.—The directors of any railroad company whose track crosses any of the canals of this State, and the present grade thereof shall be raised in consequence of directions given by the canal commissioners, may, with the assent of the said canal commissioners, lay out a new line of road for the purpose of crossing such canal on a more favorable grade, and may extend such new line and connect the same with any other line of road owned by the same company, and a survey, map, and certificate of such new or altered line shall be made and filed in the clerk's office (*a*) of the proper county; and such company shall have the same right and power to acquire title to any lands required for the purposes of such company, under the provisions of this section, as it would have in the location of a line of road in the first instance; and all the provisions of the act hereby amended, relative to acquiring title to land for rail-

road purposes, shall apply to such new or altered line; and all lands acquired by any railroad company by appraisal, for passenger and freight depots, shall be held by such company in fee; but no new line or route of road can be laid out and established, as contemplated in this section, in any city or village, unless the same be sanctioned by a vote of two-thirds of the common council of said city, or trustees of said village, nor shall any railroad company be compelled to abandon any existing line of road in consequence of establishing such new line of road. (Laws 1854, chap. 282, § 17.)

(*a*) The survey, map, and certificate should be filed in the register's office of the county, if there be one; if not, then in the county clerk's. (Laws 1871, chap. 560, § 3.)

Same: Directors may change grade, to avoid accidents &c.—Whenever the grade of any railroad shall be changed under the direction of the canal commissioners, at any point where such road crosses or shall cross any canal, or canal feeder, except in the city of Buffalo, it shall be lawful for the directors of the company owning such railroads to alter the grade of such road on each or either side of the place where such change shall have been so made by order of the canal commissioners, for such distance, and in such manner as the said directors may deem necessary. And the directors of any railroad company shall also be authorized at any time to change the grade of any part of their road, except in the city of Buffalo, in such manner as they may deem necessary to avoid accidents and to facilitate the use of such road: any and all damages arising from such alteration to be appraised in same manner as provided in the act, entitled "An act to authorize the formation of railroad

corporations, and to regulate the same," and in the several acts amendatory thereof. (Laws 1855, chap. 478, § 1.)

Change of portions of road to improve grade.—Any railroad company is hereby authorized to change portions of the line of its railroad track for the purpose of improving the grades or curves; provided that in no case such alteration or change shall vary the track of such railroad to exceed one mile, laterally, from its present location at any point; but nothing herein contained shall be construed to authorize any railroad company to obtain the lands or right of way for said purposes in any other manner than by purchase or voluntary consent of parties. (Laws 1847, chap. 272, § 4.)

Change of route.—The directors of every company formed under this act may, by a vote of two-thirds of their whole number, at any time (*a*), alter or change the route, or any part of the route, of their road, if it shall appear to them that the line can be improved thereby; and they shall make and file in the clerk's office (*b*) of the proper county, a survey, map and certificate of such alteration or change; and shall have the same right and power to acquire title to any lands required for the purposes of the company, in such altered or changed route, as if the road had been located there in the first instance (*c*); and no such alteration shall be made in any city or village, after the road shall have been constructed, unless the same is sanctioned by a vote of two-thirds of the common council of said city or trustees of said village; and in case of any alteration made in the route of any railroad after the company has commenced grading, com-

pensation shall be made to all persons for injury so done to any lands that may have been donated to the company. All the provisions of this act relative to the first location, and to acquiring title to land, shall apply to every such new or altered portion of the route. (Laws 1850, chap. 140, § 23.)

(*a*) **Time of changing route.** It had previously been provided that the company might change any part of its route on which its railroad had not been constructed. The act containing such provision reads as follows: Any railroad company, the route of whose railroad or some part thereof, shall have been located in the manner prescribed by law, may change any part of such route so located, on which its railroad shall not have been constructed, but no such change shall vary the route of such railroad to exceed one mile, laterally, from the route which shall have been so located; and the new location of any portion of such route, when so changed, shall be made in the same manner, as nearly as may be, as the first location was required by law to be made. When any portion of such route shall be so changed, such company may take and hold such lands for the construction of its railroad over such portion of its route as it would have been authorized by law to take and hold for that purpose if such portion of its route had originally been located as it shall be by such change; and when the owner of any such lands shall from any cause be incapable of selling the same, or if such company cannot agree with such owner for the purchase thereof; or, if after diligent search and inquiry, the name and residence of such owner cannot be ascertained, such company may acquire the title to such lands in the manner prescribed by the twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-seventh, twenty-eighth, twenty-ninth, and thirtieth sections of chapter two hundred and ten of the laws of eighteen hundred and forty-seven. (Laws 1847, chap. 404, § 1.)

(*b*) **Map &c. to be filed, where.** By the laws of 1871 (chap. 560, § 3) it is provided that, whenever in said act (Laws 1850, chap. 140) any map, survey, profile, report, certificate or other paper is directed to be filed or recorded in the office of the county clerk, the same shall be filed or recorded in the office of the register of the county, provided there be a register's office in said county; and all maps, profiles, surveys, reports, certificates, or other papers which have, pursuant to the provisions of said act, been heretofore filed or recorded in the office of the clerk of any county in which there is a register, shall be, within thirty days after the passage of this act, transferred to the office of such regis-

ter, and shall be by him refiled or recorded as of the date of the original filing or record.

Section three of the same act of 1871, provides for the refiling or recording in the register's office, of all maps, profiles, surveys, reports, certificates and other papers, which had been previously filed or recorded in a county clerk's office, pursuant to the act of 1850.

(*c*) **Effect of change of route.** The change of route, authorized by this section does not revest the title to any land previously acquired by the company, in the former owner; nor can the company avoid payment of the lands first acquired on the ground that subsequently to the appraisal thereof, the route of its road had been so changed that the said lands were no longer necessary for its track (Crowner *v.* Watertown & Rome R. Co. 9 How. Pr. 457).

Construction of part of line, in adjoining State.—Whenever, after due examination, it shall be ascertained by the directors of any railroad company, organized under the act entitled "An act to authorize the formation of railroad corporations, and to regulate the same," passed March 26th, 1848, or under the act entitled "An act to authorize the formation of railroad corporations, and to regulate the same," passed April 2d, 1850, that a part of the line of their railroad proposed to be made between any two points in this state, ought to be located and constructed in an adjoining state, it may be so located and constructed by a vote of two-thirds of all the directors, and the sections of said railroad within this state shall be deemed a connected line, according to the articles of association, and the directors may reduce the capital specified in their articles of association to such amount as may be deemed proper, but not less than the amount required by law for the number of miles of railroad to be actually constructed in this state. (Law 1851, chap. 19, § 2.)

Railroad connections and intersections, how constructed.—Every corporation formed under

this act shall, in addition to the powers conferred on corporations in the third title of the eighteenth chapter of the first part of the Revised Statutes, have power,

To cross, intersect, join, and unite its railroad with any other railroad before constructed, at any point on its route, and upon the grounds of such other railroad company, with the necessary turn-outs, sidings and switches, and other conveniences in furtherance of the objects of its connections. And every company whose railroad is or shall be hereafter intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined by commissioners, to be appointed by the court as is provided in this act in respect to acquiring title to real estate. (Laws 1850, chap. 140, § 28, subd. 6.)

Line common to two companies, how constructed.—Whenever two railroad companies shall, for a portion of their respective lines, embrace the same location of line, they may by agreement, provide for the construction of so much of said line, as is common to both of them, by one of the companies, and for the manner and terms upon which the business thereon shall be performed. Upon the making of such agreement, the company that is not to construct the part of the line which is common to both, may alter and amend its articles of association so as to terminate its line at the point of intersection, and may reduce its capital to a sum not less than ten thousand

dollars for each mile of the road proposed to be constructed in such amended articles of association. (Laws 1851, chap. 19, § 1.)

Same—Reserving clause as to railroads in cities.—Whenever two railroad companies shall, for a portion of their respective lines, embrace the same location of line, or whenever, by the connection of two or more railroads, the same points of termination are reached by railroad communication, any two such railroads may, by agreement, provide for the construction of so much of said line as is common to both of them by one of the companies, and for the manner and terms upon which the business thereon shall be performed. Any road so connecting may alter and amend its articles of association, so as to terminate at the point of intersection, and may reduce its capital to a sum not less than ten thousand dollars for each mile of the road constructed, or proposed to be constructed, in such amended articles of association. This section shall not be so construed as to apply to any railroad company or companies, so far as its or their line of road or roads are within the bounds of any incorporated city of this state. (Laws 1854, chap. 282, § 13.)

It is also provided that, whenever any railroad company shall have located its road so as to terminate at any railroad previously constructed or located, whereby communication might be had with any incorporated city of this State, and any other railroad company shall subsequently locate its road so as to intersect the road of said first-mentioned company, and thereby, by itself or its connections, afford communication with such city, then and in such case said first-mentioned company may alter and amend its articles of association so as to have its road terminate at the point of intersection with said road so subsequently located, provided the consent of the stockholders representing or owning two-thirds of the stock of said company shall have been first obtained thereto. (Laws 1871, chap. 560, § 2.)

Railroad may be constructed across, along, or upon highways &c.—Every corporation formed under this act, shall, in addition to the powers conferred on corporations in the third title of the eighteenth chapter of the first part of the Revised Statutes, have power,

To construct their road across, along, or upon any stream of water, water-course, street, highway, plank-road, turnpike, or canal, which the route of its road shall intersect or touch; but the company shall restore the stream or water-course, street, highway, plankroad and turnpike thus intersected or touched to its former state, or to such state as not unnecessarily to have impaired its usefulness. Every company formed under this act shall be subject to the power vested in the canal commissioners by the seventeenth section of chapter two hundred and seventy-six of the session laws of eighteen hundred and thirty-four. Nothing in this act contained shall be construed to authorize the erection of any bridge, or any obstructions across, in, or over any stream, or lake, navigated by steam or sail boats, at the place where any bridge or other obstructions may be proposed to be placed; nor to authorize the construction of any railroad not already located in, upon, or across any streets in any city, without the assent of the corporation of said city. Nor to authorize any such railroad company to construct its road upon and along any highway, without the order of the supreme court of the judicial district in which said highway is situated, made at a special term of said court, after at least ten days' notice in writing of the intention to make application for said order shall have been given to the commissioners of highways of the town in which said highway is situated. (Laws 1850,

chap. 140, § 28, subd. 5; Am'd Laws 1864, chap. 582, § 1.)

Railroad crossing stream. The company, in carrying its railroad across a navigable stream, must see to it that the usefulness of the stream is not impaired thereby (People *v.* Rensselaer R. Co. 15 Wend. 113; Cott *v.* Lewiston R. Co. 36 N. Y. 214; s. c. 34 How. Pr. 222), and the company is liable for damages from overflow of water resulting from the construction of the road over the stream (Brown *v.* Cayuga & Susquehanna R. Co. 12 N. Y. 486; Robinson *v.* N. Y. & Erie R. C. 27 Barb. 512), and it is not improper to charge that if the jury should find from the evidence, that the damage complained of, was occasioned solely by the acts of the company in excavating and removing the banks of a natural stream, to conform to the grade of the railroad, the company would be liable (Robinson *v.* N. Y. & Erie R. Co. *supra*). The company may purchase a private bridge where it will answer the corporate ends, but must take it subject to any restrictions upon the prior owners, regarding free passage over it, to the injury of a neighboring toll-bridge (Thompson *v.* N. Y. & Harlem R. Co. 3 Sandf. Ch. 625); though a grant to a railroad company to cross a river with its track, and to transport passengers and property thereon in the ordinary course of its business, is not an infringement on the exclusive privileges conferred on a toll-bridge company, by a prior grant, of erecting a toll-bridge across such river (Mohawk Bridge Company *v.* Utica & Schenectady R. Co. 6 Paige, 554).

As to construction of provisions in the charter of the Hudson River Railroad Company, regarding crossing of bays &c. see Tillotson *v.* Hudson River R. Co. 9. N. Y. 575; Getty *v.* Same, 21 Barb. 617; Furniss *v.* Same, 5 Sandf. 551.

Railroad on street, highway. When it becomes necessary to cross a highway, below the grade of the same, it is the duty of the company to carry such highway over its railroad, and to build and maintain a bridge for that purpose; and as long as the highway exists, the company, by mere abandonment of its railroad, removal of its track, and its entire dis-use, cannot absolve itself from the obligation to maintain such bridge in good repair (People *ex rel.* Town of Schaghticoke *v.* Troy & Boston R. Co. 37 How. Pr. 427). But an injunction will not be granted to restrain the company from erecting a wooden bridge, for the purpose of carrying the highway over its track, and to compel it, instead, to construct a stone culvert or arch, for such purpose (Bancus *v.* Albany Northern R. Co. 8 How. Pr. 70). It is an established inference of the common law, that the proprietors of land adjoining a public highway are the owners of the fee of said highway, and that the public has merely an easement therein (Wager *v.* Troy Union R. Co. 25 N. Y. 526; Bissell *v.* N. Y. Cent. R. Co. 23 *id.* 61; Adams *v.* Saratoga &c. R. Co. 11 Barb. 414; People *v.* Law, 34 *id.* 494; Wetmore *v.* Same, *Id.* 515). And there is no

distinction in this respect between the streets of a city and highways in the country (*Id.*); except that as to a large portion of the streets of New York city, it is claimed that the fee of the land and not a mere easement is vested in the corporation (People *v.* Kerr, 27 N. Y. 188; s. c. 25 How. Pr. 230; affirming s. c. 39 Barb. 357; reversing s. c. 20 How. Pr. 130; Drake *v.* Hudson River R. Co. 7 Barb. 508; Milhau *v.* Sharpe, 15 *id.* 193; see also Hoffman's Treatise, 289. This question was not passed upon in People *v.* Law, *supra*). Thus the taking and appropriating of a public street or highway for railroad purposes, is a new use of the public easement in the street (Wager *v.* Troy Union R. Co. 25 N. Y. 526; Carpenter *v.* Oswego &c. R. Co. 24 *id.* 655; Mahon *v.* N. Y. Cent. R. Co. *Id.* 658), and the legislature cannot authorize the company to enter upon the highway or street, and use it for the purposes of its railroad without making compensation to the owner of the fee (Trustees of Presb. Soc. in Waterloo *v.* Auburn &c. R. Co. 3 Hill, 567; Seneca Road Co. *v.* Auburn &c. R. Co. 5 *id.* 170; Fletcher *v.* Auburn &c. R. Co. 25 Wend. 462; Williams *v.* N. Y. Cent. R. Co. 16 N. Y. 97; reversing s. c. 18 Barb. 222; People *v.* Law, 34 *id.* 494; Wetmore *v.* Same, *Id.* 515; Craig *v.* Rochester &c. R. Co. 39 *id.* 494). Nor is there any distinction in this respect between railroads operated by steam or horse power (Craig *v.* Rochester &c. R. Co. *supra*; Wager *v.* Troy Union R. Co. *supra*. The Brooklyn Railroad Cases, 33 Barb. 420; 35 *id.* 364; and *id.* 373, have not the force of authority on this point. They simply decided, with respect to rival corporations, that each company as against the other must be considered as exercising a public use). And even where a turnpike company transferred its road to a railroad company, *held*, that in transferring it, the turnpike in fact abandoned its road, and although it was authorized by the legislature to transfer it to the railroad company, this could not constitutionally deprive the original owners of the land of their right of reversion without compensation (Mahon *v.* N. Y. Cent. R. Co. *supra*). The section merely conveys the right which the public has in highway, street &c. (Ellicottville &c. Plankroad Co. *v.* Buffalo &c. R. Co. 20 Barb. 644; Wager *v.* Troy Union R. Co. 25 N. Y. 526); it protects the company from indictment for a public nuisance, without affecting its liability to adjacent owners for consequential damages (Fletcher *v.* Auburn &c. R. Co. 25 Wend. 462; approved in Robinson *v.* N. Y. & Erie R. Co. 27 Barb. 512; and upon its merits in Chapman *v.* Albany & Schenectady R. Co. 10 *id.* 366; and by Denio, J., in Brown *v.* Cayuga R. Co. 12 N. Y. 486. Doubted in Radcliff's Exr. *v.* Mayor &c. of Brooklyn, 4 N. Y. 195; Corey *v.* Buffalo &c. R. Co. 23 Barb. 482). Where, however, the railroad company wrongfully occupies a street, or highway, the owner of the fee has an action of ejectment, subject to the public easement, against the company (Carpenter *v.* Oswego &c. R. Co. 24 N. Y. 655; Wager *v.* Troy Union R. Co. 25 *id.* 526; Lozier *v.* N. Y. Cent. R. Co. 42 Barb. 465), though it must appear that such wrongful occupation is wholly inconsistent with the public easement (Adams *v.* Saratoga & Washington R. Co. 11 Barb.

414). It *seems* that it would result from this ruling that the company might acquire the fee to such lands by adverse possession (see remarks Smith, J., in Craig *v.* Rochester &c. R. Co. 39 Barb. 503; but see Watson *v.* N. Y. Cent. R. Co. 6 Abb. Pr. N. S. 91).

A mere temporary inconvenience to which any individual is exposed during the construction of the railroad, in the absence of negligence or unskilfulness, is a case of *damnum absque injuria* (Plant *v.* Long Island R. Co. 10 Barb. 26; Adams *v.* Saratoga &c. R. Co. 11 Barb. 414). So consequential damages arising from the operation of a railroad, cannot be the subject of a private action (First Baptist Church *v.* Utica & Schenectady R. Co. 6 Barb. 313). Nor can damages be collected of the company for neglecting to restore the highway so as not to impair its usefulness, both under this section and also treble damages under 1 Rev. Stat. 526, § 130, respecting injuries to highways (Slippery *v.* Troy & Boston R. Co. 9 How. Pr. 83).

Highways laid out across track.—It shall be lawful for the authorities of any city, village or town in this State, who are by law empowered to lay out streets and highways, to lay out any street or highway across the track of any railroad now laid or which may hereafter be laid, without compensation to the corporation owning such railroad; but no such street or highway shall be actually opened for use until thirty days after notice of such laying out has been served personally upon the president, vice-president, treasurer or a director of such corporation. (Laws, 1853, chap. 62, § 1.)

There is nothing unlawful in authorizing the town authorities to lay out a highway across the tracks of a railroad, without making compensation to the company (Albany Northern R. Co. *v.* Brownell, 24 N.Y. 345; overruling Miller *v.* N. Y. & Erie R. Co. 21 Barb. 513.) Not so, however, of land acquired by a railroad company for the site of a station-house, engine house &c.; such land being deemed within the provisions of 1 Rev. Stat. 514, § 17 (Albany Northern R. Co. *v.* Brownell, *supra*), and an injunction will be granted to prevent the laying out of a highway across such lands (*Id*). Though it *seems* an injunction will not be granted in a case where the authorities would have the right to lay out the highway in the manner proposed, but fail to acquire jurisdiction or where the proceedings were irregular (*Id*).

Company to take such highway across its track.—It shall be the duty of any railroad corporation, across whose track a street or highway shall be laid out as aforesaid, immediately after the service of said notice, to cause the said street or highway to be taken across their track, as shall be most convenient and useful for public travel, and to cause all necessary embankments, excavations, and other work to be done on their road for that purpose; and all the provisions of the act, passed April second, eighteen hundred and fifty, in relation to crossing streets and highways, already laid out, by railroads, and in relation to cattle-guards and other securities and facilities for crossing such roads, shall apply to streets and highways hereafter laid out. (Laws, 1853, chap. 62, § 2.)

There is nothing unconstitutional in requiring the railroad company to make the necessary excavations or embankments for taking the highway across the railroad (Albany Northern R. Co. *v.* Brownell 24 N. Y. 345; overruling Miller *v.* N. Y. & Erie R. Co. 21 Barb. 513).

Penalty for neglect of such duty.—If any such railroad corporation shall neglect or refuse, for thirty days after the service of the notice aforesaid, to cause the necessary work to be done and completed, and improvements made on such streets or highways across their road, they shall forfeit and pay the sum of twenty dollars for every subsequent day's neglect or refusal, to be recovered by the officers laying out such street or highway, to be expended on the same; but the time for doing said work may be extended, not to exceed thirty days, by the county judge of the county in which such street or highway, or any part thereof, may be situated, if, in his opinion the said work cannot be performed within the time limited by this act. (Laws, 1853, chap. 62, § 3.)

Highway may be carried under or over track.—Whenever the track of a railroad constructed by a company formed under this act shall cross a railroad, a highway, turnpike or plankroad, such highway, turnpike or plankroad may be carried under or over the track, as may be found most expedient; and in cases where an embankment or cutting shall make a change in the line of such highway, turnpike or plankroad desirable, with a view to a more easy ascent or descent, the said company may take such additional lands for the construction of such road, highway, turnpike or plankroad on such new line as may be deemed requisite by the directors. Unless the lands so taken shall be purchased for the purposes aforesaid, compensation therefor shall be ascertained in the manner prescribed in this act for acquiring title to real estate, and duly made by said corporation to the owners and persons interested in such lands. The same, when so taken, shall become part of such intersecting highway, turnpike or plankroad, in such manner, and by such tenure as the adjacent parts of the same highway, turnpike or plankroad may be held for highway purposes. (Laws, 1850, chap. 140, § 24.)

Commissioners of highways may consent to construction of railroad across public highway.—Whenever any association or individual shall construct a railroad upon land purchased for that purpose, on a route which shall cross any road or other public highway, it shall be lawful for the commissioners of highways, having the supervision thereof, to give a written consent that such railroad may be constructed across, or on such road or other public highway; and thereafter such association or individ-

ual shall be authorized to construct and use a railroad across, or on such road or other highways as the commissioners aforesaid shall have permitted; but any public highway thus intersected or crossed by a railroad, shall be so restored to its former state as not to have impaired its usefulness. (Laws, 1835, chap. 300, § 1.)

Commissioners of highways to enforce duty of Company respecting highways.—The commissioner or commissioners of highways in each of the towns of this state, are hereby empowered to bring any action against any railroad corporation, that may be necessary or proper to sustain the rights of the public in and to any highway in such town, and to enforce the performance of any duty enjoined upon any railroad corporation in relation to any highway in the town of which they are commissioners, and to maintain an action for damages or expenses which any town may sustain or may have sustained, or may be put to or may have been put to, in consequence of any act or omission of any such corporation in violation of any law in relation to such highway. (Laws, 1855, chap. 255, § 1.)

Railroad to compensate turnpike company &c. for crossing same.—In case any railroad shall occupy or cross any turnpike or plankroad, the railroad company shall pay such turnpike or plankroad company all damages the turnpike or plankroad company may sustain by the reason of the occupancy or crossing such turnpike or plankroad, the damages to be ascertained and paid in the same manner as is provided by law for the assessment and payment of

damages in case of taking private property for the use of railroad companies. (Laws 1851, chap. 19, § 4.)

This section authorizes the company, in the absence of the consent of the turnpike or plankroad company, to occupy or cross such turnpike or plankroad, upon payment of the sum awarded by the commisioners (Ellicottville &c. Plankroad Co. *v.* Buffalo &c. R. Co. 20 Barb. 644; Troy & Boston R. Co. *v.* Northern R. Co. 16 *id.* 100). While subdivision 5, of section 28, of the general railroad act (Laws 1850, chap. 140), giving the company power to construct its road across or upon any stream of water, water course, street, highway, *plankroad*, *turnpike* &c. only conveys the right which the public has in such stream of water &c. and makes no provision for the case where the consent of the owners is not obtained (*Id*).

When common council may permit construction of city railroad.—The common councils of the several cities of this state shall not, hereafter, permit to be constructed in either of the streets or avenues of said city, a railroad for the transportation of passengers, which commences and ends in said city, without the consent thereto of a majority in interest of the owners of property upon the streets in which said railroad is to be constructed being first had and obtained. For the purpose of determining what constitutes said majority in interest, reference shall be had to the assessed value of the whole located upon such street or avenue. (Laws 1854, chap. 140, § 1.)

The State legislature has original authority to regulate the uses to which the streets shall be placed, since the interest in the use of such streets is *publici juris* (People *v.* N. Y. & Harlem R. Co. 45 Barb. 73; s. c. 26 How. Pr. 44; People *v.* Kerr, 27 N. Y. 188; s. c. 25 How. Pr. 230; affirming s. c. 37 Barb. 357; reversing s. c. 20 How. Pr. 130). Without the legislative sanction, or approval, the city government has no right to grant railroad privileges (*Id.* Davis *v.* Mayor &c. of New York,* 14

* This action arose out of a resolution (1 Duer, page 464) of the common council of New York, conferring railroad franchise on one Jacob Sharpe and associates, to construct a railroad in Broadway and other streets. On the summons and complaint (the latter set forth *in extenso* in 1 Duer, pages 453–464),

N. Y. 506; reversing on other grounds s. c. *sub nom.* State of New York *v.* Mayor &c. of New York, 3 Duer, 119; and overruling in effect Milhau *v.* Sharpe, 15 Barb. 193. But see Milhau *v.* Sharpe, 17 Barb. 435; 28 *id.* 228). Nor has it power to authorize the extension of a city railroad through certain streets, except perhaps, where such extension is necessary and incidental to the general franchise of the company (People *v.* Third Ave. R. Co. 45 Barb. 63; s. c. 30 How. Pr. 121), though an unauthorized act of the common council, permitting the construction of a railroad in certain streets may be legalized by a subsequent act of the legislature ratifying and confirming the same (People *v.* Law, 34 Barb. 494; Wetmore *v.* Same, *Id.* 515). But the legislature cannot authorize a city railroad, to enter upon the streets, and use them for the purposes of its railroad, without making compensation to the owners of the fee, for the additional burden imposed upon the street (*Id.* Wager *v.* Troy Union R. Co. 25 N. Y. 526; Craig *v.* Rochester &c. R. Co. 39 Barb. 494.

Mr. Justice Campbell enjoined the mayor, aldermen, and commonalty from passing the said resolution, and granted an order to show cause why the injunction should not be perpetual (1 Duer, page 468). This injunction was served on the mayor and several of the aldermen and assistant aldermen, but in defiance of such order, the two boards adopted the objectionable resolution. Motions for attachments against said aldermen to arrest them for contempt of court in disobeying the injunction were heard and granted (Davis *v.* Mayor &c. of N. Y. 1 Duer, 451). The defendants appeared under the separate attachments issued against them, and after elaborate argument, were adjudged guilty of contempt, and penalties imposed accordingly (*sub nom.* People *v.* Compton, 1 Duer, 512); and judgement was accordingly entered (Form given in note, 1 Duer, page 571). The appeals taken were affirmed by the general term without further argument (Reporter's note, 1 Duer, page 453). The judgment was also affirmed by the Court of Appeals (*sub nom.* People *v.* Sturtevant, 9 N. Y. 263). The summons and complaint were now amended, and Sharpe and his associates made defendants, and a preliminary injunction granted against them, on the amended complaint. Upon the answer of the defendants, an argument (June 10, 1853) and reargument (Oct. 10, 1853) were had before Mr. Justice Duer, and the pleadings amended by making the Attorney-General a party. The case was resumed the following month, and final judgment given for the plaintiff, by which it was declared the common council had no power or authority to make the said grant, and that the same was wholly illegal and void, and the defendants, Sharpe and his associates, were perpetually enjoined against constructing the railroad. The defendants appealed from the judgment and the several orders, to the general term, who affirmed the judgment of the court below (*sub nom.* State of New York *v.* Mayor &c. of New York, 3 Duer, 121). On appeal to the Court of Appeals, it was *held*, that the resolution of the common council was void, though the judgment was reversed, and a new trial ordered, on the ground that the order making the Attorney-General a party plaintiff was erroneous (*sub nom.* Davis *v.* Mayor &c. of N. Y. 14 N. Y. 506). Growing out of this same grant to Sharpe, arose the suit of Milhau *v.* Sharpe (15 Barb. 193; 17 *id.* 435; 28 *id.* 228).

The opinions expressed in Brooklyn Central &c. R. Co. *v.* Brooklyn City R. Co. 33 Barb. 420; Brooklyn City R. Co. *v.* Couey Island &c. R. Co. 35 *id.* 364, respecting the rights of the private owners of the soil, who were not parties to the action, nor in any way interested, are not entitled to the weight of authorities. The principle to be deduced from those cases, is that each company as against the other, must be considered as exercising a public use), though an exception may exist as to the streets of New York, the fee of which is claimed to be in the corporation (People *v.* Kerr, *supra;* Drake *v.* Hudson River R. Co. 7 Barb. 508; N. Y. & Harlem R. Co. *v.* Forty-second St. & Grand St. Ferry R. Co. 50 *id.* 285; s. c. 32 How. Pr. 481. See also Hoffman's Treatise, 289. This question was not discussed in People *v.* Law, and Wetmore *v.* Same, *supra;* Milhau *v.* Sharpe, 15 *id.* 193). An authorized railroad in a city, is not *per se* a nuisance or purpresture (Milhau *v.* Sharpe, 15 Barb. 193; Davis *v.* Mayor &c. of N. Y. 14 N. Y. 506; Wetmore *v.* Story, 22 Barb. 414; Harris *v.* Thompson, 9 *id.* 350; see also to same effect Hamilton *v.* N. Y. & Harlem R. Co. 9 Paige, 171; Drake *v.* Hudson River R. Co. 7 Barb. 508; Plant *v.* Long Island R. Co. 10 *id.* 26; Hentz *v.* Same, 13 *id.* 646; Anderson *v.* Rochester &c. R. Co. 9 How. Pr. 553; Williams *v.* N. Y. Cent. R. Co. 16 N. Y. 97), though where it would be a nuisance, an action may be brought by a land owner along the street to enjoin its construction (Milhau *v.* Sharpe. 28 Barb. 223; affirming s. c. 17 *id.* 435; Same *v.* Same, 15 *id.* 193; Stuyvesant *v.* Pearsall, 15 *id.* 244; Davis *v.* Mayor &c. of New York, *supra;* Wetmore *v.* Story, *supra*), and is the proper remedy (People *v.* Law, 34 Barb. 494; 22 How. Pr. 109); but an injunction cannot be properly granted for the purpose of restraining the city government from giving its assent to the construction of a horse railroad (People *v.* Mayor &c. of N. Y. 20 How. Pr. 144; see also Whitney *v.* Same, 28 Barb. 233). A right of way is the only interest which a city railroad has in the streets along which its tracks are laid, and it has no such interest in that part of the street not occupied by its tracks, as to entitle it to an injunction restraining another company from laying tracks through the same street, which would not practically interfere with the running of the cars of the former company (N. Y. & Harlem R. Co. *v.* Forty-second St. &c. R. Co. 50 Barb. 309; affirming s. c. *Id.* 285; 32 How. Pr. 481), nor is the mere crossing of its track, by a second railroad company, such an appropriation of the property of the former, as to entitle it to an injunction restraining such crossing (*Id.* Brooklyn Cent. &c. R. Co. *v.* Brooklyn City R. Co. 33 Barb. 420). But the track does not become such a part of the street as to authorize the common council to confer upon other railroad companies, or the public generally, the right to use the track with their vehicles for the transportation of passengers, in common with the owners of the franchise (Brooklyn Cent. &c. R. Co. *v.* Brooklyn City R. Co. *supra;* Davis *v.* Mayor &c. of New York, *supra*). The company has the prior right to the use of its tracks, restricted only so far that the rate of speed shall not be dangerous (Wil-

brand *v.* Eighth Ave. R. Co. 3 Bosw. 314; see Fettritch *v.* Dickenson, 22 How. Pr. 248). The legislature, however, may authorize one company to use any portion of another company's track, upon making due compensation (Matter of Kerr, 42 Barb. 119).

Conditions upon which authority to construct such road is granted.—After such consent is obtained, it shall be lawful for the common council of the city in which such street or avenue is located to grant authority to construct and establish such railroad, upon such terms, conditions, and stipulations, in relation thereto, as such common council may see fit to prescribe. But no such grants shall be made, except to such person or persons as shall give adequate security to comply in all respects, with the terms, conditions and stipulations so to be prescribed by such common council, and will agree to carry and convey passengers upon such railroad at the lowest rates of fare. Nor shall such grants be made until after public notices of intention to make the same, and of the terms, conditions and stipulations upon which it will be given, and inviting proposals therefor, at a specified time and place, shall be published under the direction of the common council in one or more of the principal newspapers published in the city in which said railroad is proposed to be authorized and constructed. (Laws, 1854, chap. 140, § 2.)

Grants to city railroads confirmed.—This act shall not be held to prevent the construction, extension or use of any railroad, in any of the cities of this State, which have already been constructed in part; but the respective parties and companies, by whom such roads have been in part constructed, and their assigns, are hereby authorized to construct, complete,

extend and use such roads, in and through the streets and avenues designated in the respective grants, licenses, resolutions or contracts under which the same have been so in part constructed, and to that end the grants, licenses, and resolutions aforesaid are hereby confirmed. (Laws, 1854, chap. 140, § 3.)

Railroads in the city of New York.—It shall not be lawful hereafter to lay, construct or operate any railroad in, upon or along any or either of the streets or avenues of the city of New York, wherever such railroad may commence or end, except under the authority and subject to the regulations and restrictions which the legislature may hereafter grant and provide. This section shall not be deemed to affect the operation, as far as laid, of any railroad now constructed and duly authorized. Nor shall it be held to impair, in any manner, any valid act for or relating to any railroad in said city, existing on the first day of January, eighteen hundred and sixty. (Laws, 1860, chap. 10, § 1.)

All acts and parts of acts inconsistent with the above provisions were repealed by section 2 of the same act.

Street railroads in the city of Buffalo.—The said the park commissioners (*a*) shall have power upon such terms, or upon the payment of such yearly license fee or *per capita* tax as the park commissioners may prescribe, to grant to any street railway company in said city (*b*) the privilege of laying down and operating a railway, for the carriage of passengers only, through the said connecting streets and approaches (*c*); but no street or other railway shall enter upon, in or

through the said park or parks.* (Laws, 1869, chap. 165, § 25.)

(*a*) Of the City of Buffalo.
(*b*) Buffalo.
(*c*) Referring to the connecting streets and approaches to the parks.

The Laws of 1860 (chap. 145) provide that any street railway now or thereafter to be built within or along any of the streets in the city of Buffalo, and any corporation now or thereafter to be organized for that purpose, shall not be required to comply with the provisions of the twenty-second, twenty-third, twenty-seventh, thirty-first, thirty-second, thirty-third, thirty-sixth, thirty-seventh, thirty-eighth, thirty-ninth, forty-fourth, and forty-fifth sections of the general Act of 1850 (chap. 140), nor shall be liable for any claim or compensation for damages, provided for in the eighteenth section of the third title of the revised charter of said city, passed April 13th, 1853. Such company may receive and hold any grant from the common council of the city of Buffalo, or from the grantees thereof, of the right to construct a railway in or through any of the streets, alleys, or highways in the said city, under the act entitled "An act in relation to the construction of railroads in cities," passed April 4th, 1854, or the acts amendatory thereof, and to construct, maintain, and operate the same. A certificate of the assessors of said city, attached to the consent provided for by the first section of said act, and filed in the office of the clerk of said city, certifying that a majority in interest of the owners of all the property upon the street therein named, have signed the same, shall be presumptive evidence thereof. The directors of said company may order an election of directors, and fix a time and place for the same, and call a meeting of the stockholders for that purpose, and serve a notice thereof in writing at least five days before the time so fixed, upon each stockholder personally, or by leaving the same at his last or usual place of residence with some person of suitable age and discretion. It shall be lawful for the stockholders at any meeting so called, or at any time to which such meeting shall be adjourned, to determine the number of directors to be elected, who shall thereafter manage the concerns of the said corporation; which number shall not be less than five, nor more than seven, and proceed to the election thereof. In such determination and election each stockholder shall be entitled to one vote for every share of the capital stock he may then own, and the persons so elected shall hold their respective places for one year, and until others shall be chosen in their places At any such meeting provided for above, the said stockholders

* The omitted portion of the section, relates to the power of the commissioners to license hacks for use in the parks; the sale of refreshments; and the application of moneys received by said commissioners.

may, by resolution, change the corporate name of said company, and adopt any other; and on filing a certified copy of such resolution in the office of the Secretary of State, the said company shall be thereafter known by the name so adopted.

Injury to railway property.—Every person who shall willfully, with malicious intent, remove, break, displace, throw down or destroy, any iron, wooden or other rail, or any branches or branch-ways, or any parts of the track, or any bridge, viaduct, culvert, embankment, or other fixture, or any part thereof, attached to or connected with such tracks of any railroad in this State now in operation, or which shall hereafter be put in operation, or who shall willfully with like malicious intent, place any obstructions upon the rails or track of such railroad, shall, upon conviction, be punished by imprisonment in the State prison not exceeding five years, or in a county jail not less than six months. (Laws 1838, chap. 160, § 1.)

This section is not to be so construed as to extend to cases where death to a human being results from the commission of any of the above mentioned offences (Laws 1838, chap. 160, § 2).

The third section of the above act repealed a former provision relative to this subject, contained in the laws of 1834. That provision, so repealed, provided that every person who should thereafter be convicted of placing upon any railroad, within this State, any stone, pieces of wood, or any other obstruction, with the design to obstruct or impede the passage of the cars upon the said railroad, and with the intent to injure the said railroad, or the passengers or cars passing thereon, should be deemed guilty of a misdemeanor, and should be punished by imprisonment in the county jail not exceeding one year, or by a fine not exceeding two hundred and fifty dollars, or both, in the discretion of the court before which such conviction should be had (Laws 1834, chap. 187).

Same: Offender liable to company for damages.—If any person or persons shall willfully do, or cause to be done, any act or acts whatever, whereby any building, construction or work of any railroad

corporation, or any engine, machine or structure, or any matter or thing appertaining to the same shall be stopped, obstructed, impaired, weakened, injured or destroyed; the person or persons so offending shall be guilty of a misdemeanor, and shall forfeit and pay to the said corporation treble the amount of damages sustained by means of such offence. (Laws 1850, chap. 140, § 42.)

The penalty here imposed, and all penalties imposed by the general act of 1850, may be sued for in the name of the People of this State; and an action for its recovery may be brought before a justice of the peace, where the amount of the penalty does not exceed one hundred dollars (Laws 1850, chap. 140, § 43).

Liens for labor and materials employed in erecting railroad bridges &c.—The provisions of the laws relating to mechanics' liens heretofore passed shall apply to bridges and trestle work erected for railroads and materials furnished therefor, and labor performed in constructing said bridges, trestle work and other structures connected therewith, and the time within which said liens may be filed shall be extended to ninety days from the time when the last work shall have been performed on said bridges, trestle work and structures connected therewith, or the time from which said materials shall have been delivered. This act shall apply to all uncompleted work commenced previous to the passage of this act. (Laws 1870, chap. 529, § 1.)

Liability of company for labor performed in constructing road.—As often as any contractor for the construction of any part of a railroad, which is in progress of construction, shall be indebted to any laborer for thirty or any less number of day's labor

performed in constructing said road, such laborer may give notice of such indebtedness to said company in the manner herein provided; and said company shall thereupon become liable to pay such laborer the amount so due him for such labor, and an action may be maintained against said company therefor. Such notice shall be given by said laborer to said company within twenty days after the performance of the number of day's labor, for which the claim is made. Such notice shall be in writing, and shall state the months and particular days of the month upon which labor was performed and remains unpaid for, the price per day, the amount due, with the name of the contractor from whom due, the section of the road performed, and shall be signed by such laborer or his attorney, to which notice an affidavit shall be annexed, made by such laborer or his attorney, to the effect that of his own knowledge the statements contained in such notice are in all respects true. Such notice so verified, shall be served on an engineer, agent or superintendent employed by said company, having charge of the section of the road on which such labor was performed, personally or by leaving the same at the office or usual place of business of such engineer, agent, or superintendent, with some person of suitable age. But no action shall be maintained against any company, under the provisions of this section, unless the same is commenced after ten and within thirty days after notice is given to the company by such laborer as above provided. (Laws 1850, chap. 140, § 12; Am'd Laws 1871, chap. 669, § 2.)

The term "contractor" in such connection must be understood as embracing all such persons as employ "laborers" in the construction of the road, whether they be original or sub-contractors. By the term "laborers" is meant those persons in the employ of the contractor

actually engaged in the construction of the road (Warner *v.* Hudson River R. Co. 5 How. Pr. 454). Thus the railroad company is liable for such indebtedness, not only to those employed by parties contracting immediately with it; but also to the employees of one to whom the original contractor had sub-let a portion of the work (Kent *v.* N. Y. Cent. R. Co. 12 N. Y. 628; overruling Millered *v.* Lake Ontario &c. R. Co. 9 How. Pr. 238; and approving Warner *v.* Hudson River R. Co. *supra*). This liability, however, is confined to services personally rendered by the laborer (Atcherson *v.* Troy & Boston R. Co. 6 Abb. Pr. N. S. 329; Cummings *v.* N. Y. & Oswego Midland R. Co. 1 Lans. 68); and he cannot recover for the services of his assistant and team (*Id*). The intent of this section is to provide for the payment of laborers employed by contractors, in contradistinction to section ten of the same act, which provides for the payment of the immediate servants and employees of the company (Gallagher *v.* Ashby, 26 Barb. 143).

Service of process on railroad corporations.—Every railroad corporation in this State shall, within thirty days after this act shall take effect, designate some person, residing in each of the counties through or into which such railroad may run, on whom process to be issued by a justice of the peace may be served, and shall file such designation in the office of the clerk of county where the person so designated shall reside, and a copy of such designation, duly certified by such clerk, shall be evidence of such appointment, and the service of any process upon the person so designated or named, to be issued by any justice of the peace in any civil action or matter of which such justice may have jurisdiction, shall be as valid and effectual as if served upon the president or any director of any such corporation, as now provided by law. (Laws 1854, chap. 282, § 14.)

Proceeding in justice's court. The company can only be sued in a justice's court, by a long summons (Sherwood *v.* Saratoga &c. R. Co. 15 Barb. 650; Johnson *v.* Cayuga &c. R. Co. 11 *id.* 621; Belden *v.* N. Y. & Harlem R. Co. 15 How. Pr. 17). And an objection to a summons returnable in less than six days, is not waived, by appearing and pleading after the objection has been overruled (Belden *v.* N. Y. & Harlem R. Co. *supra*). The manner of service should appear by the consta-

ble's return to the summons, so that the justice may determine whether it was properly served on the company (Sherman *v.* Saratoga &c. R. Co. *supra*), but it is no where made the duty of a constable receiving a summons against a railroad company, to ascertain or to certify whether there be any director or other officer of the company within his county, or whether the company has failed to designate some person, as required above, on whom service can be made (Wheeler *v.* N. Y. & Harlem R. Co. 24 Barb. 414), and where the return stated that the summons was served on one A. B., a managing agent of the defendant, it was held sufficient to give the justice jurisdiction (N. Y. & Erie R. Co. *v.* Purdy, 18 Barb. 574). If the return be false, the company may prosecute the constable for the same, or may appeal and allege errors of fact (*Id.*). The provisions of the above section do not interfere with service upon a director of the company, where such service can be made (Curtis *v.* Avon &c. R. Co. 49 Barb. 148).

General provisions respecting service on corporations.—There exists provisions somewhat similar to the above, in relation to service of process upon foreign corporations doing business within this state. These provisions are enacted as follows:—"Every insurance and other corporation created by the laws of any other state, doing business in this state, shall, within thirty days after the passage of this act, designate some person residing in each county where such corporation transacts business, on whom process issued by authority of, or under any law of this state, may be served, and within the time aforesaid, shall file such designation in the office of the Secretary of State; and a copy of such designation, duly certified by said officer, shall be evidence of such appointment; and it shall be lawful to serve on such person so designated, any process issued as aforesaid; such service shall be made on such person in such manner as shall be prescribed in case of service required to be made on any resident of this state, and such service shall be deemed a valid service thereof" (Laws 1855, chap. 279, § 1). "In all such cases where such designation shall not be made as aforesaid, and such foreign corporation cannot be served with such process according to the present provisions of law, it shall be lawful to serve such process on any person, who shall be found within this state acting as the agent of said corporation, or doing business for them" (Laws 1855, chap. 279, § 2).

The Code provides that the summons may be served on "the president or other head of the corporation, secretary, cashier, treasurer, a director or managing agent thereof" (Code of Procedure, § 134, subd. 1; see also 2 Rev. Stat. 458, § 5; *Id.* 459, § 15). The term managing agent, as used in this connection, has been *held* to mean one whose agency extends to all the transactions of the company, and is not confined to the management of a particular branch or department of the business (Brewster *v.* Michigan Cent. R. Co., 5 How. Pr. 183). Thus the ticket agent (Doty *v.* Same, 8 Abb. Pr. 427), or baggage-master (Flynn *v.*

Hudson River R. Co., 6 How. Pr. 308), is not a managing agent in such a sense as to render service of the summons upon him the commencement of an action against the company. For the purpose of jurisdiction, the company is deemed a resident of each county through which it passes (Johnson *v.* Cayuga &c. R. Co., 11 Barb. 621; Sherwood *v.* Saratoga &c. R. Co., 15 *id.* 650; Pond *v.* Hudson River R. Co., 17 How. Pr. 543; Belden *v.* N. Y. & Harlem R. Co., 15 How. Pr. 17; see also People *ex rel.* Hudson River R. Co. *v.* Pierce, 31 Barb. 138; People *ex rel.* Buffalo &c. R. Co. *v.* Fredericks, 48 *id.* 173; s. c. 33 How. Pr. 150; Fowler *v.* Westervelt, 40 *id.* 374; s. c. 17 Abb. Pr. 59); and when created by the laws of this state, is deemed a resident thereof, although the bulk of its property and business lie in a foreign state (Pond *v.* Hudson River R. Co., *supra*; Crowley *v.* Panama R. Co., 30 Barb. 99; see also Kraushaar *v.* N. Y. Steamboat Co., 7 Robt. 356).

Same.—In all cases where such designation shall not be made as aforesaid, and where no officer of such corporation shall reside in the county on whom process can be served according to the existing provisions of law, the process mentioned in the next preceding section may be served on any local superintendent of repairs, freight agent, agent to sell tickets, or station-keeper of such corporation, residing in such county, which service shall be as effectual in all respects as if made on the president or any director of such corporation. (Laws 1854, chap. 282; § 15.)

X.

OF THE MANAGEMENT OF THE ROAD.

Noxious weeds.—It shall be the duty of the several railroad corporations and turnpike road corporations within this state, to cause all Canada thistles and other noxious weeds growing on any lands owned or occupied by such corporations, to be cut down twice in each and every year, once between the fifteenth day of June and the first day of July, and once between the fifteenth day of August and the first day of September. (Laws 1847, chap. 100, § 3.)

If the said corporations, or any or either of them, ... shall neglect to cause the same to be cut down, at the times in the third section of this act mentioned, it shall be lawful for any person to cut the same, between the first and fifteenth days of July, and between the first and fifteenth days of September in each year, at the expense of the corporation on whose lands said Canada thistles or other noxious weeds shall be so cut, at the rate of one dollar per day for the time so occupied in cutting, to be recovered in any court of justice in this state. (Laws 1847, chap. 100, § 4.)

Passenger trains, how formed.—In forming a passenger train, baggage, freight, merchandise, or lumber cars shall not be placed in rear of the passenger cars; and if they or any of them shall be so placed, the officer or agent who so directed, or knowingly suffered such arrangement, and the conductor of the train shall be deemed guilty of a misdemeanor, and be punished accordingly. (Laws 1850, chap. 140, § 38.)

The company is to start and run its cars for the transportation of passengers and property at regular times, to be fixed by public notice (Laws 1850, chap. 140, § 36; Am'd Laws 1867, chap. 49, § 1).

Cars to be supplied with drinking water for use of passengers.—Every railroad company whose line of road shall exceed forty continuous miles in length, shall, for the better comfort of passengers, provide in each passenger car a suitable receptacle for water, with a cup or drinking utensil attached upon or near such receptacle, and shall keep the said receptacle, while said car is in use, constantly supplied with cool water; and any company failing to obey the provisions of this section shall, for each offence of omission as aforesaid, forfeit as a penalty the sum of twenty-five dollars; one half of said penalty to be paid to the informer, and the remaining one half to the overseer of the poor of the county in which judgment shall have been recovered. And any railroad company whose main route of road does not exceed fifteen miles, may elect seven of its stockholders as a board of directors to manage its affairs at any annual election after the passage of this act. (Laws 1864, chap. 582, § 3.)

Car platforms.—It shall be the duty of every railroad company or corporation in this State, and every railroad company or corporation running, or that may hereafter run its passenger cars in this State, to cause the platforms upon the ends of all passenger cars to be so constructed that when said cars shall be coupled together, or made up into trains and in motion, danger of injury to persons or loss of life between the ends of said cars by falling between the platforms of said cars while passing from one car to another, shall, so far as practicable, be avoided. It shall be the duty of every railroad company operating a railroad in this

State by the power of steam, to designate and prescribe such peculiar uniform or external apparel, to be worn by its officers, agents and employés, engaged in or about its passenger offices or stations, or on or about its trains upon its tracks, as shall plainly, to all travelers, distinguish all such persons; and such uniform or apparel shall also plainly indicate or distinguish the position or rank of the wearer in the employment of such company. It shall be the duty of every such person to provide and wear such apparel or uniform when employed as aforesaid. And every such company that shall fail to designate and prescribe such apparel or uniform and to also cause the same to be generally worn by all such persons from and after six months from the passage of this act, shall forfeit to the people of this State, and be liable to pay to the treasurer of this State, on the first day of January next following the expiration of said six months, and on every first day of January thereafter, the sum of ten thousand dollars. It shall be the duty of the Attorney-General of this State, in the name of the people thereof, to sue for and recover said penalties for the benefit of the State. And in case of the refusal or omission of any person aforesaid to wear said uniform or apparel, as contemplated by this act, or to obey any reasonable rule or regulation of any such company relative to the same, or the wearing thereof, it shall be the right and duty of every such company to deduct and retain the amount of five per cent of the agreed or accustomed compensation of such delinquent person during the period of any such neglect or refusal. And every person who shall advise or use any persuasion to induce any person being an officer, agent or employé of any such company, to leave the service of such company by reason of any such apparel or uniform being re-

quired to be worn, or to refuse to wear the same, or any part thereof, every person who without authority shall wear such uniform or apparel, and every person being an officer or agent in any company aforesaid who shall use any inducement with any person aforesaid to come into the employment of any other such company, by reason of any apparel or uniform so required or designated to be worn, shall severally, by reason thereof, be guilty of a misdemeanor and be liable to be punished for such offence. (Laws 1867, chap. 483, § 1.)

Penalty for violation of act.—Each and every violation of this act by any railroad company or corporation, shall, on conviction, be punished by a fine of not less than fifty dollars nor more than five hundred dollars, to be sued for and collected in the name of the people of the State of New York by the Attorney-General, and the moneys, when collected, to be paid into the general fund of the State. (Laws 1867, chap. 483, § 2.)

Construction of act.—This act shall not operate or be construed to exempt railroad companies or corporations from liability for damages to persons who may be injured or sustain loss or damage by or through any neglect to comply with the provisions of this act. (Laws 1867, chap. 483, § 3.)

Time allowed for compliance with act.—Time shall be allowed to all railroad companies or corporations to comply with the provisions of this act, as follows, to wit: one quarter of all the said cars of each of said companies or corporations shall be made to conform to the requirements of this act within three months from and after the passage of this act, one

other quarter thereof within six months, one other quarter thereof within nine months, and the remaining one quarter thereof within one year from and after the passage of this act. (Laws 1867, chap. 483, § 4.)

Sleeping cars.—Any patentee of a sleeping car, or his legal representative, may place his car upon any railroad of this state, with the assent of the company owning such road. Such patentee, or his legal representative, may charge for the use of said car, in all cases, to each passenger occupying the same, forty cents, which sum shall entitle such passenger to the use of a birth (*sic*) for one hundred miles; and the said patentee, or his legal representative, may charge at and after the rate of three mills for every additional mile, but in no case shall the charge exceed eighty cents. (Laws 1858, chap. 125, § 1.)

The railroad companies permitting the use of such cars shall, nevertheless, keep sufficient first class cars of other kinds for the convenient use and occupation of all passengers not wishing to use a sleeping car. And the tickets issued for the use of the sleeping cars shall have plainly written or printed thereon, "sleeping car," and all persons using a sleeping car shall be furnished with such tickets. (Laws 1858, chap. 125, § 2.)

No railroad corporation shall be interested in the additional sum paid for the use of berths in sleeping cars, pursuant to the provision of this act. (Laws 1858, chap. 125, § 3.)

Nothing in this act contained shall be so construed as to exonerate any railroad company from the payment of damages for injuries, in the same way and to the same extent they would be required to do by law if such cars were owned and provided by the company. (Laws 1858, chap. 125, § 4.)

The legislature may alter, amend, or repeal this act. (Laws 1858, chap. 125, § 5.)

Signals at crossing.—A bell shall be placed on each locomotive engine run on any railroad, and rung at the distance of at least eighty rods from the place where the railroad shall cross any traveled public road or street on the same level with the railroad, and be kept ringing until it shall have crossed such road or street; or a steam whistle shall be attached to each locomotive engine and be sounded at least eighty rods from the place where the railroad shall cross any such traveled public road or street upon the same level with the railroad, except in cities, and be sounded at intervals until it shall have crossed such road or street; and every neglect to comply with the foregoing provisions shall subject the corporation owning the railroad to a fine not exceeding twenty dollars, in the discretion of the court having cognizance of the offence; and every engineer having charge of the engine, for every neglect to comply with the requirements aforesaid, shall be fined not exceeding fifty dollars, or imprisoned in the county jail not exceeding sixty days, in the discretion of the court before which any indictment may be tried; and the said corporation shall, moreover, be liable for all damages which shall be sustained by any person by reason of such neglect.

All the penalties hereinbefore mentioned may be sued for in the name of the people of the state of New York, by the district attorney of the county wherein the same shall accrue, within ten days thereafter; and in case such district attorney shall omit or neglect to sue for such fine or fines within the time aforesaid, then it may and shall be lawful for any person aggrieved to sue therefor in the name of the overseers of the poor

of the town wherein any such fine or fines shall have accrued, which, when recovered, shall be paid to the said overseers of the poor, for the benefit of the poor of said town. And in case such persons shall fail to make out and maintain any such action, it shall be the duty of the court before whom any such action shall be had to enter a judgment against the complainant for the costs of said action. (Laws 1854, chap. 282, § 7.)

Repeal of former act. Section 39 of the general act (Laws 1850, chap. 140) relating to this subject, was repealed by the Laws of 1854 (chap. 282, § 18). In the original section, the provision was not limited to crossings on the same level with the railroad track, and was *held* to embrace a crossing above or below the track (People *v.* N. Y Cent. R. Co. 13 N. Y. 78; affirming s. c. 25 Barb. 199).

Signals required.—The ringing of the bell, or sounding of the whistle, is required under the above section, only as the locomotive engine approaches the crossing, and not after it has passed (Wilson *v.* Rochester & Syracuse R. Co., 16 Barb. 167), and a complaint which omits the allegation that the default was made in approaching the crossing, does not state a sufficient cause of action (*Id*). The very object of requiring the engineer to sound an alarm *before* reaching the crossing is to put the way traveler on his guard; and when the engineer neglects the necessary signals, he deprives the traveler of one of the means upon which he has a right to rely for protection against the danger of a collision (Beisiegel *v.* N. Y. Cent. R. Co., 34 N. Y. 622). So, where the traveler on a public highway approaches the track, and can neither see nor hear any indication of an approaching train, he is at liberty to assume that none is sufficiently near to render the crossing dangerous (*Id;* Ernst *v.* Hudson River R. Co.,* 35 N. Y. 9; Renwick *v.* N. Y. Cent. R. Co., 36 *id.* 132; Newson *v.* N. Y. Cent. R. Co., 29 *id.* 383; Johnson *v.* Hudson River R. Co., 20 *id.* 65. See also Hegan *v.* Eighth Ave. R. Co.,

* This case was tried four times. Upon the first trial the plaintiff was non-suited. A new trial having been granted (32 Barb. 159; 19 How. Pr. 205), the case was tried a second time, and judgment given for the plaintiff. This was reversed by the Court of Appeals, and a new trial ordered (20 How. Pr. 97). On the third trial the plaintiff was non-suited. The non-suit was sustained by the general term, but reversed by the Court of Appeals and a new trial ordered (35 N. Y. 9; 32 How. Pr. 61). On the fourth trial, judgment was given for the plaintiff, and affirmed by the Court of Appeals (39 N. Y. 61; 36 How. Pr. 84).

15 *id.* 380; Gordon *v.* Grand St. &c. R. Co., 40 Barb. 546; Harpell *v.* Curtis, 1 E. D. Smith, 78); but the absence of signals required by the company, for the guidance of its servants, merely, cannot be taken advantage of by a stranger (Schwartz *v.* Hudson River R. Co., 4 Robt. 347). An omission, however, to give the statutory signals, is competent evidence of negligence (O'Mara *v.* Hudson River R. Co., 38 N. Y. 445; Renwick *v.* N. Y. Cent. R. Co., 36 N. Y. 132; Ernst *v.* Hudson River R. Co., *supra*); though to authorize a recovery, it must appear that such neglect was the sole cause of the injury complained of (Dascomb *v.* Buffalo &c. R. Co., 27 Barb. 221), and positive testimony that the bell or whistle was sounded, is entitled to more weight than negative evidence in relation to such facts (Seibert *v.* Erie R. Co., 49 Barb. 583; Renwick *v.* N. Y. Cent. R. Co., 36 N. Y. 132). Thus in an action to recover damages for a personal injury, where there was no further claim of negligence on the part of the company, than neglect of the requirements of this section, and the testimony of the engineer and another witness was clear, positive, and unqualified, that the whistle was blown and the bell rung, and this was uncontradicted except by the plaintiff and another witness who swore that they heard no bell; *Held*, on appeal that a verdict in favor of the plaintiff was not warranted by the evidence, and a new trial was ordered (Seibert *v.* Erie R. Co., *supra*). But admissions of an engineer, in reference to an act of his while in the employ of the company, made after the transaction, and after he had ceased to be its servant or agent, is not binding upon the company (Card *v.* N. Y. & Harlem R. Co., 50 Barb. 39). The signals must be made "*at the distance of at least eighty rods*" from the crossing, and the jury have no right to change the limit as thus fixed by the statute; nor is it error for a judge to refuse to charge "that it mattered not whether the bell was rung the distance of eighty rods, if it was rung far enough from the crossing to warn passers-by (Havens *v.* Erie R. Co., 53 Barb. 328).

When company not liable for damages, from omission to give warning.—A person attempting to cross a railroad track must make use of his ordinary faculties, to ascertain if there is danger in the attempt (Gonzales *v.* N. Y. & Harlem R. Co., 38 N. Y. 440; Beisiegel *v.* N. Y. Cent. R. Co., 34 N. Y. 622), and, in general, he is guilty of gross negligence upon failure to take such precautions to see if any train is approaching (Mackey *v.* N. Y. Cent. R. Co., 27 Barb. 528; Brooks *v.* Buffalo &c. R. Co., 25 Barb. 600; s. c. affirmed, 27 Barb. 532 n.; Brendell *v.* Buffalo &c. R. Co., 27 N. Y. 534 n.; Wilds *v.* Hudson River R. Co., 24 N. Y. 430; see also 29 N. Y. 315). Thus negligence in driving upon the track without making the slightest effort to ascertain whether a locomotive was approaching, is gross negligence, and the plaintiff cannot recover of the company; and under such circumstances, it is immaterial whether the train was on time, or behind hand, when the collision occurred (Dascomb *v.* Buffalo &c. R. Co., 27 Barb. 221). Such gross negligence on the part of the plaintiff will defeat his action for

damages, notwithstanding the omission of the company to give the requisite signals (Steves *v.* Oswego & Syracuse R. Co., 18 N. Y. 422). Thus it is not erroneous to non-suit the plaintiff, in an action to recover damages for an injury sustained from a locomotive at a crossing, where his failure to discover its approach was due simply to the omission of the engineer to give the usual warnings (Beisiegel *v.* N. Y. Cent. R. Co., *supra*); nor to charge the jury, that if the plaintiff could have seen the approaching train by looking in the direction of it, before he reached the crossing, and in time to have avoided a collision, his attempt to cross was wrong (Dascomb *v.* Buffalo &c. R. Co., *supra*); nor to charge, that persons approaching a railroad in plain sight, are bound to look and see if any train is coming, and that if they look up and down the track, as men of ordinary prudence would do in such case, and are not negligent, the plaintiff is entitled to recover, if the company is negligent (Havens *v.* Erie R. Co., 53 Barb. 328). It is for the jury to determine how far a man should look in such a case; but he must use his eyes and ears, as would, under all the circumstances, men of ordinary prudence (*Id*). Where, however, there was nothing to obstruct the plaintiff's view of the approaching train; *Held* that he could not recover (Sheffield *v.* Rochester &c. R. Co., 21 Barb. 339; Spencer *v.* Utica &c. R. Co., 5 *id.* 337; Steves *v.* Oswego & Syracuse R. Co., *supra*), since, under such circumstances, it will be presumed that he did not look (Wilcox *v.* Rome &c. R. Co., 39 N. Y. 358); nor can he recover, where, after being notified of the approaching train, he whipped up his horses and drove upon the track (Mackey *v.* N. Y. Cent. R. Co, *supra;* Ernst *v.* Hudson River R. Co., 35 N. Y. 9). But where the injured party had, what appeared to be, satisfactory evidence, that it was safe for him to venture to cross, he is not absolutely bound to look up or down the track (Ernst *v.* Hudson River R. Co., *supra;* McGrath *v.* Hudson River R. Co., 32 Barb. 144; Brown *v.* N. Y. Cent. R. Co., 32 N. Y. 597; Stillwell *v.* N. Y. Cent. R. Co., 34 N. Y. 29). Thus in cities, where intervening obstacles constantly obstruct the view of the track, it has been held that a foot traveler is not guilty of negligence in attempting to cross the track, provided he has first listened at a point near the crossing, and heard no signal or warning (Mackay *v.* N. Y. Cent. R. Co., 35 N. Y. 75; Beisiegel *v.* N. Y. Cent. R. Co., *supra*). But in such a case the company are not liable for a collision, if they have run their engine with moderate speed, and made the usual signals before reaching the crossing (*Id*). Evidence of drunkenness on the part of one crossing the track, raises a strong presumption of contributory negligence on his part (Brand *v.* Schenectady & Troy R. Co., 8 Barb. 368). The care exercised by the plaintiff at the time of the injury and the negligence of the defendant, are both questions for the jury to decide (*Id*); so, *per* Marvin, J., "Where the main fact or facts touching the negligence is sought to be proved by other facts, called circumstantial evidence, the question is always a question for the jury. * * But where the direct fact at issue is established by undisputed

evidence, and such fact is decisive of the cause, a question of law is raised, and the court should decide it" (Dascomb *v.* Buffalo &c. R. Co., *supra*); though it does not follow necessarily, that where there is no conflict of evidence, the court is to decide the issue (Oldfield *v.* N. Y. & N. H. R. Co., 14 N. Y. 310).

Penalty.—The penalty is incurred each time that any engine of the company passes without making the requisite signals (People *v.* N. Y. Cent. R. Co. 13 N. Y. 78; affirming s. c. 25 Barb. 199).

Annual report required of company.—Every railroad corporation formed under this act, shall make an annual report to the state engineer and surveyor of the operations of the year ending on the thirtieth day of September; which report shall be verified by the oaths of the treasurer, or president, and acting superintendent of operations, and be filed in the office of the state engineer and surveyor by the first day of December in each year, and shall state:

1. The amount of capital as by charter;
2. The amount of stock subscribed;
3. The amount paid in as by last report;
4. The total amount now of capital stock paid in;
5. The funded debt by last report;
6. The total amount now of funded debt;
7. The floating debt as by last report;
8. The amount now of floating debt;
9. The total amount now of funded and floating debt;
10. The average rate per annum of interest on funded debt.

Cost of road and equipment.

11. For graduation and masonry by last report;
12. The total amount now expended for the same.
13. The amount for bridges by last report;
14. The total amount now expended for the same.

15. The amount for superstructure, including iron, by last report;

16. Total amount now expended for the same.

17. For passenger and freight stations, buildings, and fixtures, by last report;

18. Total amount now expended for the same.

19. For engine and car houses, machine shops, and machinery and fixtures, by last report;

20. Total amount now expended for the same.

21. For land, land damages and fences, by last report;

22. Total amount now expended for the same.

23. For locomotives and fixtures and snow plows, by last report;

24. Total amount now expended for the same.

25. For passenger and baggage cars, by last report;

26. Total amount now expended for the same.

27. For freight cars, as by last report;

28. Total amount now expended for the same.

29. For engineering and agencies, by last report;

30. Total amount now expended for the same.

31. Total cost of road and equipment.

Characteristics of road.

32. Length of road;

33. Length of road laid;

34. Length of double track, including sidings;

35. Length of branches owned by the company laid;

36. Length of double track on the same.

37. Weight of rail by yard on main track.

38. The number of engine houses and shops; of engines and cars, and their character.

39. It shall also be the duty of each corporation to

transmit to the state engineer and surveyor the following maps, profiles, and drawings exhibiting the characteristics of their roads; the map to show the length and direction of each straight line, and the length and radius of each curve; also the point of crossing of each town and county line, and the length of line in each town and county accurately determined by measurements to be taken after the completion of the road. The profile to be on the map, and shall show the grade line and surface of ground in the usual method, also the elevation of grades above tides at each change in the inclination thereof. The maps and profile to be made on a scale of five hundred feet to one-tenth of a foot; vertical scale of profile to be one hundred feet to one-tenth of a foot. For all roads or parts of roads now done, or in operation, the said maps shall be returned on or before the first day of January next; and for all roads now in progress, or which may hereafter be constructed, the said maps and profile shall be returned within three months after the same or any portion thereof shall be in use.

Doings of the year in transportation, and total miles run.

40. Miles run by passenger trains;

41. Miles run by freight trains;

42. The rate of fare for passengers, charged for the respective classes per mile;

43. Number of passengers carried in cars;

44. Number of miles traveled by passengers;

45. Number of tons of two thousand pounds of freight carried in cars;

46. Number of miles carried, or total movement of freight in miles; all to be accurately compiled from

the daily records or evidences of earnings, manifest and way bills.

47. Average rate of speed adopted by ordinary passenger trains, including stops;

48. Average rate of speed adopted by ordinary passenger trains when in motion;

49. Average rate of speed adopted by express trains including stops;

50. Average rate of speed adopted by express trains when in motion;

51. Average rate of speed adopted by freight trains, including stops;

52. Average rate of speed adopted by freight trains when in motion;

53. Average weight in tons of two thousand pounds of passenger trains, exclusive of passengers and baggage;

54. Average weight in tons of freight trains, exclusive of freight;

55. The amount of freight, specifying the quantity in tons, of the products of the forest, of animals, of vegetable food, other agricultural products, manufactures, merchandise and other articles.

Expenses of maintaining the road or real estate of the corporation

56. For repairs of road-bed and railway, excepting cost of iron, which shall be the cost of labor and materials used during the year; also use and cost of engines engaged in ballasting; also the renewal and repairs of gravel and stone cars, and all items of cost connected with keeping the road in order.

57. For depreciation of way;

58. Length , in feet, of iron used in renewals, with weight and cost;

59. Repairs of buildings;
60. Repairs of fences and gates;
61. Taxes on real estate;
62. Total expenses of maintaining road or real estate for the year;
63. Expenses of machinery or personal property of the corporation;
64. Repairs of engines and tenders;
65. Depreciation of engines and tenders;
66. Repairs of passenger and baggage cars;
67. Depreciation of passenger and baggage cars;
68. Repairs of freight cars;
69. Depreciation of freight cars;
70. Repairs of tools and machinery in shops;
71. Incidental expenses, including fuel, oil, clerks, watchmen about shops;
72. Total expenses of repair of machinery;
73. Office expenses, stationery.
74. Agents and clerks;
75. Labor handling freight, loading and unloading;
76. Porters, watch and switchmen;
77. Wood and water station attendance;
78. Conductors, baggage and brakemen;
79. Enginemen and firemen;
80. Fuel (first cost, and labor preparing for use);
81. Oil and waste for engines and tenders;
82. Oil and waste for freight cars;
83. Oil and waste for baggage and passenger cars;
84. Loss and damage of goods and baggage;
85. Damages for injuries of persons;
86. Damages to property, including damages by fire, cattle killed on road;
87. General superintendence;
88. Contingencies;
89. Total expenses of operating road;

90. The above statements are to be made without reference to the sums actually received or paid during the year. The following statement of the earnings and cash receipts and payments are required:

91. From passengers;

92. From freight;

93. From other sources;

94. The above to be stated without reference to the amount actually collected.

95. Receipts during the year from freight;

96. From passengers;

97. From other sources, specifying what in detail;

98. Payments from transportation expenses;

99. For interest;

100. Dividends on stock, amount and rate per cent;

101. Payment to surplus fund and total amount of said fund;

102. The number of persons injured in life and limb, and the cause of the injury, and whether passengers or persons employed.

Whether any such accidents have arisen from carelessness or negligence of any person in the employment of the corporation, and whether such person is retained in the service of the corporation.

103. It shall be the duty of the State engineer and surveyor to arrange the information contained in such reports in a tabular form, and prepare the same, together with the said reports, in a single document, for printing, for the use of the legislature, and report the same to the legislature on the first day of its session in each year.

104. All the items under the heads of expenses of maintaining the road or real estate of the corporation, expenses of machinery or personal property of the corporation, expenses of use of road and machinery or

operating the road, shall be carried out under two heads, the one showing the cost of freight transportation, the other, the cost of passenger transportation.

105. The provisions of this section shall apply to all existing railroad corporations; and the report of the said existing railroad corporations, made in pursuance of the provisions of this section, shall be deemed to be a full compliance with any existing law or resolution requiring annual reports to be made by such corporation. (Laws 1850, chap. 140, § 31.)

The requirements of this section do not apply to street or horse railroads (Laws 1867, chap. 906, § 1). The monthly statements of the property carried on the railroad, which the company was formerly required to make to the comptroller, were by the laws of 1851 dispensed with (Laws 1851, chap. 497, § 2).

Lessees of road, to make report.—Any railroad corporation which may be the lessee of any other railroad shall, in addition to the powers and duties conferred and imposed by the act entitled, "An Act in relation to railroads held under lease," passed April third, one thousand eight hundred and sixty-seven, be required to make to the State Engineer a report of such facts concerning the operation of said leased road or roads as the lessors would otherwise be required to make, and the lessors shall not be required to make such report. (Laws 1869, chap. 844, § 1.)

Annual report of street or horse railroads.—Every railroad corporation in this State, whose road is operated by horse-power exclusively, or by steam dummy cars exclusively, or partly by horse-power and partly (*sic*) steam dummy cars, and every such railroad corporation which shall hereafter be organized, shall make an annual report to the State Engineer and Surveyor, of the operations of the year ending on the

thirtieth day of September; which report shall be verified by the oaths of the treasurer or president and acting superintendent of operations, and be filed in the office of the State Engineer and Surveyor, by the first of December in each year, and shall state:

1. The amount of capital stock.
2. The amount of stock subscribed.
3. The amount paid in as by last report.
4. The total amount now of capital stock paid in.
5. The funded debt as by last report.
6. The total amount now of funded debt.
7. The floating debt as by last report.
8. The amount now of floating debt.
9. The total amount now of funded and floating debt.
10. The average rate per annum of interest on funded debt.

Cost of road and equipment.

11. For road-bed and superstructure, including iron, by last report.
12. The total amount now expended for the same.
13. For land, buildings and fixtures, including land damages, by last report.
14. The total amount now expended for the same.
15. For dummy cars, horses, mules and harness, by last report.
16. The total amount now expended for the same.
17. For cars and sleighs, by last report.
18. The total amount now expended for the same.
19. Total cost of road and equipment.

Characteristics of road.

20. Length of road, in miles.
21. Length of road laid.
22. Length of double track, including sidings.

23. Weight of rail, by yard.

24. The number of dummy cars, of cars, and of horses and mules.

25. The total number of passengers carried in cars.

26. The total number of tons of freight carried in cars.

27. The rates of fare for passengers.

28. The average time consumed by passenger-cars in passing over the road.

Expenses of maintaining the road and real estate.

29. Repairs of road-bed and railway (including iron), and repairs of buildings and fixtures.

30. Taxes on real estate (to include all taxes except for United States revenue).

31. Total cost of maintaining road and real estate.

Expenses of operating road and for repairs.

32. General superintendence.

33. Officers, clerks, agents and office expenses.

34. Conductors, drivers and engineers on dummy cars.

35. Watchmen, starters, switchmen, roadmen, etc.

36. Repairs of dummy-cars.

37. Repairs of cars and sleighs.

38. Repairs of harness, including materials and labor.

39. Horseshoeing, including materials and labor.

40. Horses and mules.

41. Stable expenses.

42. Feed, grain, hay, etc., including expense of grinding.

43. Fuel, gas and lights.

44. Oil and waste.

45. Water tax.

46. Damages to persons and property, including medical attendance.

47. Law expenses.

48. Rents, including use of other roads, ferries, etc.

49. Insurance.

50. Advertising and printing.

51. United States tax on earnings.

52. Contingencies.

53. Total expense of operating road, and repairs.

54. Receipts from passengers.

55. Receipts from freight.

56. Receipts from all other sources, specifying what, in detail.

57. Total receipts from all sources during the year.

58. Payments for transportation, maintenance and repairs.

59. Payments for interest.

60. Payments for dividends on stock, amount and rate per cent.

61. All other payments, specifying what, in detail.

62. Total payments during the year.

63. The number of persons injured in life and limb; the cause of the injury, and whether passengers, employees, or other persons. Also whether such accidents have arisen from carelessness or negligence of any person in the employment of such corporation, and whether such person is retained in the service of the corporation. (Laws 1867, chap. 906, § 2.)

Penalty for neglect to make report.—Any railroad corporation which shall neglect to make the report as is provide (*sic*) in the preceding section (*a*), shall be liable to a penalty of two hundred and fifty dollars, and an additional penalty of twenty-five dol-

lars, for each day after the first day of December, on which they shall neglect to file said report, as provided in said section, to be sued for in the name of the people of the State of New York, for their use. (Laws 1850, chap. 140, § 32; Am'd Laws, 1867, chap. 906, § 3.)

(*a*) Laws 1850, chap. 140, § 31. But this penalty is also incurred by horse and dummy railroads, whenever they neglect to make the report required of them by law (Laws 1867, chap. 906, § 4).

The legislature may authorize the Attorney-General to discharge a judgment recovered against the corporation for neglecting to report agreeable to law (Laws 1853, chap. 229).

XI.

OF RAILROAD EMPLOYEES.

Qualification of employees of road.—It shall be lawful for the owner or owners of any railroad in this State to employ any inhabitant of this State, of the age of twenty-one years, as a car driver or conductor, or in any other capacity, notwithstanding any law, regulation, or ordinance of any officer or municipality, or of the common council or government of any city or county to the contrary. (Laws 1865, chap. 246, § 1.)

Disqualifications.—No person shall be employed as an engineer by any officer or agent acting for or in behalf of either of the railroads of this State, who cannot read the printed time-tables and ordinary handwriting. (Laws 1870, chap. 636, § 1.)

Same.—No person shall run an engine on a regular or special train upon either of the railroads of this State who cannot read printed time-tables and ordinary handwriting. (Laws 1870, chap. 636, § 2.)

Penalty for offending against provisions of act.—Any person offending against the provisions of this act shall, upon conviction thereof, be deemed guilty of a misdemeanor, and punishable for each offence by a fine not exceeding one hundred dollars, or six months' imprisonment in a county jail, in the discretion of the court having cognizance of the offence. (Laws 1870, chap. 636, § 3.)

Company to refuse employment to persons of intemperate habits.—All incorporated companies and persons in this state, engaged in conveying passengers, including especially all railroad, steamboat and ferry companies, and all kinds of corporations conveying for hire, persons or property, shall be and hereby are required to refuse employment to all persons who, on good and sufficient proof, shall be shown to indulge in the intemperate use of intoxicating drinks, and any such company which shall retain in its employ any person or persons who shall on competent proof, be shown to be intoxicated at any period whilst in the active service of said company or person, either as engineer, conductor, fireman, switchtender, commander, pilot, mate or foreman, or be in any way connected with the moving power or management, or whose duty, if neglected, would diminish the safety and security of life, limb or property, entrusted thereto, said company or corporation shall be liable to pay a sum of not less than fifty dollars nor more than one hundred dollars to the county treasurer in the county where the offence may be committed and proved, before any court of competent jurisdiction. (Laws 1857, chap. 628, § 31.)

The penalty provided for above, is to be sued for and recovered in the name of the board of commissioners of excise, and paid over to the treasurer of the county for the support of the poor of the county (Laws 1857, chap. 628, §§ 22, 30).

Employee liable to a penalty for intoxication.—If any person employed or who shall be employed upon the railroad of any such corporation as engineer, conductor, baggage-master, brakeman, switchman, fireman, bridge-tender, flagman, signalman, or having charge of the regulating or running of trains upon said railroad in any manner whatsoever, be intoxicated while engaged in the discharge of such duties,

he shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be punishable for each offence by a fine not exceeding one hundred dollars, or by imprisonment in a county jail for a term not exceeding six months, in the discretion of the court having cognizance of the offence. And if any person so employed as aforesaid by any such corporation shall, by reason of such intoxication, do any act or neglect any duty, which act or neglect shall cause the death or injury to any person or persons, he shall, upon conviction thereof, be punishable by imprisonment in the county jail for a term of not less than six months, or in the State prison for a term not exceeding five years, in the discretion of the court having cognizance of the offence. (Laws 1850, chap. 140, § 41; Am'd Laws 1871, chap. 560, § 4.)

See also Laws 1849, chap. 256, § 2.

Employees to wear indicia of office.—Every conductor, baggage-master, engineer, brakeman, or other servant of any railroad corporation employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge, which shall indicate his office, and the initial letters of the style of the corporation by which he is employed. No conductor or collector without such badge, shall be entitled to demand or receive from any passenger any fare or ticket, or to exercise any of the powers of his office; and no officer or servant without such badge shall have authority to meddle or interfere with any passenger, his baggage or property. (Laws 1850, chap. 140, § 30.)

Employees to provide and wear uniform.*—It shall be the duty of every railroad company oper-

* The omitted portion of the section relates to car platforms.

ating a railroad in this State by the power of steam, to designate and prescribe such peculiar uniform or external apparel, to be worn by its officers, agents, and employees, engaged in or about its passenger offices or stations, or on or about its trains upon its tracks, as shall plainly, to all travelers, distinguish all such persons; and such uniform or apparel shall also plainly indicate or distinguish the position or rank of the wearer in the employment of such company. It shall be the duty of every such person to provide and wear such apparel or uniform when employed as aforesaid. And every such company that shall fail to designate and prescribe such apparel or uniform, and to also cause the same to be generally worn by all such persons from and after six months from the passage of this act, shall forfeit to the people of this State, and be liable to pay to the Treasurer of this State, on the first day of January next following the expiration of said six months, and on every first day of January thereafter, the sum of ten thousand dollars. It shall be the duty of the Attorney-General of this State, in the name of the people thereof, to sue for and recover said penalties for the benefit of the State. And in case of the refusal or omission of any person aforesaid to wear said uniform or apparel, as contemplated by this act, or to obey any reasonable rule or regulation of any such company relative to the same, or the wearing thereof, it shall be the right and duty of every such company to deduct and retain the amount of five per cent of the agreed or accustomed compensation of such delinquent person during the period of any such neglect or refusal. And every person who shall advise or use any persuasion to induce any person being an officer, agent or employee of any such company, to leave the service of such company by reason of any such apparel or uni-

form being required to be worn, or to refuse to wear the same, or any part thereof, every person who without authority shall wear such uniform or apparel, and every person being an officer or agent in any company aforesaid who shall use any inducement with any person aforesaid to come into the employment of any other such company, by reason of any apparel or uniform so required or designated to be worn, shall severally, by reason thereof, be guilty of a misdemeanor and be liable to be punished for such offence. (Laws 1867, chap. 483, § 1.)

Penalty for violation of act, by company.—Each and every violation of this act by any railroad company or corporation, shall, on conviction, be punished by a fine of not less than fifty dollars nor more than five hundred dollars, to be sued for and collected in the name of the people of the State of New York by the Attorney-General, and the moneys, when collected, to be paid into the general fund of the State. (Laws 1867, chap. 483, § 2.)

Construction of act.—This act shall not operate or be construed to exempt railroad companies or corporations from liability for damages to persons who may be injured or sustain loss or damage by or through any neglect to comply with the provisions of this act. (Laws 1867, chap. 483, § 4.)

XII.

OF RAILROAD POLICE.

Company may apply for appointment of police.—Any railroad corporation on which road steam is used as the motive power, and any steamboat company, may apply to the Governor to commission such person or persons as the said corporation may designate, to act as policemen for said corporation; but no more than one policeman shall be appointed at any one station of such company. (Laws 1863, chap. 346, § 1; Am'd Laws, 1866, chap. 259, § 1.)

Appointment.—The Governor, upon such application, may appoint such persons or so many of them as he may deem proper to be such policemen, and shall issue to such person or persons so appointed a commission to act as such policeman. (Laws 1863, chap. 346, § 2.)

Duties and powers of police.—Every policeman so appointed shall, before entering upon the duties of his office, take and subscribe the oath prescribed in the twelfth article of the constitution; such oath, with a copy of the commission, shall be filed with the Secretary of State, and a certificate thereof, by said Secretary, be filed with the clerk of each county through or into which the railroad or steamboat for which such policeman is appointed may run, and in which it is intended the said policemen shall act; and such policemen shall severally possess all the

powers of policemen in the several towns, cities, and villages in which they shall so be authorized to act as aforesaid. (Laws 1863, chap. 346, § 3; Am'd Laws 1866, chap. 259, § 2.)

Police to wear indicia of office.—Such police shall, when on duty, severally wear a metallic shield, with the words "railway police," or "steamboat police," as the case may be, and the name of the corporation for which appointed inscribed thereon, and said shield shall always be worn in plain view, except when employed as detectives. (Laws 1863, chap. 346, § 4; Am'd Laws 1866, chap. 259, § 3.)

Their compensation.—The compensation of such police shall be paid by the companies for which the policemen are respectively appointed, as may be agreed on between them. (Laws 1863, chap. 346, § 5.)

Police discontinued, how.—Whenever any company shall no longer require the services of any policemen so appointed as aforesaid, they may file a notice to that effect in the several offices in which notice of such appointment was originally filed, and thereupon the power of such officer shall cease and be determined. (Laws 1863, chap. 346, § 6.)

XIII.

OF THE TRANSPORTATION OF PERSONS AND PROPERTY: AND HEREIN OF COMPENSATION.

Power of the company to carry passengers and property.—Every corporation formed under this act shall, in addition to the powers conferred on corporations in the third title of the eighteenth chapter of the first part of the Revised Statutes, have power:

To take and convey persons and property on their railroad by the power or force of steam, or of animals, or by any mechanical power (*a*), and to receive compensation therefor.

To regulate (*b*) the time and manner in which passengers (*c*) and property shall be transported, and the compensation to be paid therefor; but such compensation, for any passenger and his ordinary baggage shall not exceed three cents per mile (*d*). (Laws 1850, chap. 140, § 28, subds. 7, 9.)

(*a*) **Mechanical power.**—Authority to use any mechanical power, authorizes the use of steam power (Moshier *v.* Utica & Schenectady R. Co., 8 Barb. 427).

(*b*) **Regulations respecting transportation.**—Ordinary passenger tickets are merely receipts for the passage money, or tokens to facilitate the conductor in recognizing the persons entitled to passage, and are not contracts within the rule excluding parol evidence to vary a written agreement (Quimby *v.* Vanderbilt, 17 N. Y. 306). It is a reasonable regulation that the passenger whenever requested by the conductor, shall exhibit his ticket (Hibbard *v.* N. Y. & Erie R. Co., 15 N. Y. 455); or surrender the same to the conductor, during the trip (Vedder *v.* Fellows, 20 N. Y. 126; Northern R. Co. *v.* Page, 22 Barb. 130); or that the coupons annexed to the ticket are not good unless detached by the

conductor (Walker *v.* Dry Dock &c. R. Co., 33 How. Pr. 327); or that the ticket shall be good for a continuous trip only, within a specified number of days (Barker *v.* Coflin, 31 Barb 556); or where desiring to stop over at a station, shall procure such indorsement from the conductor as shall secure the passage from that point to the end of the journey represented by the ticket, and on a subsequent day or train (Beebe *v.* Ayres, 28 Barb. 275). But an inscription on the ticket, "good for this trip only," must be construed as referring to the journey, and not to any particular day or train, so that under it, a passenger may be entitled to a passage on a day subsequent to its date. When he commences his trip, and becomes a passenger, then the ticket is good for that trip and no other (Pier *v.* Finch, 24 Barb. 514), and if the passenger refuses to obey any such regulations, the company is justified in collecting his fare again, or in putting him off the cars, upon his refusing to pay it (see cases cited above). But the company cannot limits its liability for loss of, or injury to property transported by it, by a regulation and notice to the effect that all baggage is at the risk of the owner (Camden &c. Transportation Co. *v.* Belknap, 21 Wend. 354; Rawson *v.* Pennsylvania R. Co., 2 Abb. Pr. N. S. 220); nor by a regulation that all claims for damages for goods lost or injured while in its custody, must be made within ten days after delivery of the property at the station (Browning *v.* Long Island R. Co., 2 Daly, 117).

(*c*) **Who is a passenger.**—Neither the payment of fare, nor an entry into the cars, is essential to create the relation of carrier and passenger. Being within the reception-room, waiting to take the cars, will make one a passenger as effectually, as if he were within the body of the car (Brown *v.* N. Y. Cent. R. Co., 32 N. Y. 597; Stinson *v.* Same, *Id.* 333; Gordon *v.* Grand St. &c. R. Co., 40 Barb. 546). In an action for injuries from the negligence of the company, the plaintiff's right of transit as a passenger was *held*, to depend, not on whether his ticket was good for the passage, but whether the conductor had recognized his right (Edgerton *v.* N. Y. & Harlem R. Co., 39 N. Y. 227; affirming s. c. 35 Barb. 193; Glasco *v.* N. Y. Cent. R. Co., 36 Barb. 557). But the liability of the company does not extend to injuries to wrongdoers on the train (Robertson *v.* N. Y. & Erie R. Co., 22 Barb. 91).

(*d*) **Company may fix rate of compensation.**—Companies formed for the purpose of conveying persons and property on their railways by means of a propelling rope or cable attached to stationary power, may fix and collect rates of fare on their respective roads, not exceeding five cents for each mile or any fraction of a mile, for each passenger, and with a right to a minimum fare of ten cents (Laws 1866, chap. 697, § 3).

Duty of Company towards passengers and property offered for transportation.—Every such

corporation shall start and run their cars for the transportation of passengers and property, at regular times, to be fixed by public notice (*a*), and shall furnish sufficient accommodations for the transportation of all such passengers and property as shall within a reasonable time previous thereto be offered for transportation at the place of starting, and at the junctions of other railroads, and at the usual stopping places established for receiving and discharging way passengers and freights for that train; and shall take, transport and discharge such passengers and property at and from and to such places on the due payment of the fare or freight legally authorized therefor. No preference for the transaction of business shall be granted by said railroad corporation to any one of two or more companies or associations competing, in the business of transporting property for themselves or for others, upon the railroad owned or operated by such corporation, either upon the cars, or in the depots or buildings, or upon the grounds of such corporation; and whenever the railroad of such corporation, at or near the same place, connects with, or is intersected by any other railroad, such corporation shall fairly and impartially grant and afford to each of such competing companies or associations, equal terms of accommodation, privileges and facilities in the transportation of property and freight to and upon such connecting or intersecting railroad, and shall also grant and afford to each of such competing companies or associations, and to the officers, agents and employees thereof, equal facilities in the interchange and use of express, freight and other cars, so far as may be necessary to accommodate the business of each of such competing companies or associations, and every railroad corporation shall be liable to the party aggrieved in an action for damages for any neg-

lect or refusal in the premises. The provisions of this section shall apply to all existing railroad corporations (*b*). (Laws 1850, chap. 140, § 36; Am'd Laws, 1867, chap. 49, § 1.)

(*a*) **Running of the trains.** The company is guilty of negligence in arranging its time-tables in such a manner, that trains approaching a station from opposite directions on the same track, become due at the station at the same moment (Wright *v.* N. Y. Cent. R. Co., 28 Barb. 80). It is the duty of the company to furnish all requisite information to its passengers of the route traveled, and the cars to be taken at its intermediate stations. It must give published notice of the running time of the trains, and also special notice to the travelers on the road, of the necessity of changing cars at any particular station (Page *v.* N. Y. Cent. R. Co., 6 Duer, 523). It must exercise extraordinary care in moving its cars in an unusual manner (Gordon *v.* Grand St. &c. R. Co., 40 Barb. 546; Brown *v.* N. Y. Cent. R. Co., 32 N. Y. 597), and a higher degree of care when running its cars along a highway (Card *v.* N. Y. & Harlem R. Co., 50 Barb. 39), or through a village or city, than in open country (Fero *v.* Buffalo & State Line R. Co., 22 N. Y. 209; Wilds *v.* Hudson River R. Co., 33 Barb. 503). Thus, the running of an engine across frequented highways, by a fireman alone, will render the company liable for negligence (O'Mara *v.* Hudson River R. Co., 38 N. Y. 445); and in the management of horse cars, the company must provide bells for the horses, and lights at night for the cars (Johnson *v.* Hudson River R. Co., 20 N. Y. 65; affirming s. c. 6 Duer, 633). It is part of the duty of the company, to render assistance to passengers in getting on or off the cars, in doing which, children and infirm or aged persons must be shown more consideration than persons under no disability, and are entitled to more time in getting on or off the cars (Sheridan *v.* Brooklyn &c. R. Co., 36 N. Y. 39), and the company is liable for the negligence of its servants in rendering such assistance (Mulhado *v.* Brooklyn City R. Co., 30 N. Y. 370; Drew *v.* Sixth Ave. R. Co., 26 *id.* 49; Same *v.* Same, 3 Keyes, 429; Nichols *v.* Same, 38 *id.* 131; affirming s. c. 10 Bosw. 260; Maverick *v.* Eighth Ave. R. Co., 36 N. Y. 378; Meyer *v.* Second Ave. R. Co., 8 Bosw. 305). In an action for injuries from negligence in starting the car, if the plaintiff fail to establish that the injuries complained of, were caused by the starting of the horses, the complaint must be dismissed (Dickson *v.* Broadway & Seventh Ave. R. Co., 41 How. Pr. 151); and neither the opinion of witnesses as to whether the train was stopped sufficient time to enable a passenger to get on or off (Keller *v.* N. Y. Cent. R. Co., 94 How. Pr. 172); nor the declaration of the driver of the car, to the effect that he could not stop it, on account of the breaks being out of order, is admissible (Luby *v.* Hudson River R. Co., 17 N. Y. 131). The servants of the company are not

bound to stop a train, when ordered to do so, by strangers, without giving any reason (Mott *v.* Hudson River R. Co., 1 Robt. 585), so *held* as to request of fireman to those in charge of an approaching train to stop the same (*Id*). A parol executory agreement that the cars shall stop regularly at a certain place as a permanent arrangement, is void under 2 Rev. Stat, 135, § 2, subd. 1, because not to be performed within one year (Pitkin *v.* Long Island R. Co., 2 Barb. Ch. 221). The company is liable for the acts of its servants, whereby the train is negligently or carelessly run. Thus, where the engineer ran the train against obstacles under the impression that he could knock them out of the way (Willis *v.* Long Island R. Co., 34 N. Y. 670), or where a passenger was impelled to jump from the train, by reason of its negligent management, to avoid danger, the company is liable for injuries ensuing therefrom (Eldridge *v.* Same, 1 Sandf. 89), so where a passenger's elbow was fractured by coming in contact with some object projecting from a car on an adjoining track of the company's road, it was *held* that the burden of proof was on the company to show that the injury was not attributable to its want of care (Holbrook *v.* Utica & Schenectady R. Co., 12 N. Y. 236). A joint action will lie against two companies, by a passenger injured by a collision resulting from the concurrent negligence of both (Colgrove *v.* N. Y. & N. H. R. Co., and N. Y. & Harlem R. Co., 20 N. Y. 492; affirming s. c. 6 Duer, 382). The company is also liable for the wilful acts of its servants, whereby the running of the train is prevented (Blackstock *v.* N. Y. & Erie R. Co., 20 N. Y. 48; affirming s. c. 1 Bosw. 77), or delayed (Weed *v.* Panama R. Co., 17 N. Y. 362). But the company is not liable to its employees for injuries from the negligent manner in which the train is run, where it has used reasonable care in selecting only such servants as were of competent skill and experience (Sherman *v.* Rochester & Syracuse R. Co., 17 N. Y. 153; affirming s. c. 15 Barb. 574; Russell *v.* Hudson River R. Co., 17 N. Y. 134; reversing s. c. 5 Duer, 39; Coon *v.* Syracuse &c. R. Co., 5 N. Y. 492; Wright *v.* N. Y. Cent. R. Co., 28 Barb. 80).

Safety of Cars. The requirements of the statute are not the measure of the company's care and skill in the transportation of passengers. The fact that the statute requires certain precautions to be taken, does not relieve the company of obligation to take precautions not enumerated, but adapted to secure the safety of its trains (Hegeman *v.* Western R. Corp., 13 N. Y. 9; Bowen *v.* N. Y. Cent. R. Co., 18 *id.* 408; Smith *v.* N. Y. & Harlem R. Co., 19 *id.* 127; Alden *v.* N. Y. Cent. R. Co., 26 *id.* 102; Brown *v.* Same, 34 *id.* 404; Maverick *v.* Eighth Ave. R. Co., 36 *id.* 378). Thus where a passenger was injured by the breaking of a car-axle, by reason of an internal defect, which no vigilance or skill could have discovered by an external examination, and it was proved that the company purchased the axle from manufacturers of the first rank, yet it was *held*, that the company was liable if the defect could have been discovered, as it was proved it could, in the course of manufacture, by a process or test known to the skillful in such business (Hegeman *v.* Western R. Corp.,

supra), and even where the defect could not have been discovered by any practical mode of examination, the company has been held liable (Alden *v.* N. Y. Cent. R. Co. *supra*). Nor can the company using the car at the time of the accident, escape liability by showing that the car was owned by, and borrowed from another company (Jetter *v.* N. Y. & Harlem R. Co., 2 Keyes, 154). In an action against the company, for injury caused from defective vehicle, after the existence of the defect is established, evidence, that prior to the accident, the attention of the servants of the company was directed to the defect, is admissible (Hardencamp *v.* Second Ave. R. Co., 1 Sweeny, 490). But the company can not introduce in evidence a report of the accident made to it, by its servants (*Id*). Consult for charge to jury, in action for injury caused by defective axle (Hanley *v.* N. Y. & Harlem R. Co., 1 Edm. 359), or by defective wheel (Oliver *v.* N. Y. & Erie R. Co., *Id.* 389). The company is not *prima facie* liable to its own servants for injuries from defects of which it had no notice, in its rolling stock, rails, bridges &c. (Warner *v.* Erie R. Co., 39 N. Y. 468; reversing s. c. 49 Barb. 558; McMillan *v.* Saratoga & Washington R. Co., 20 Barb. 449; Faulkner *v.* Erie R. Co., 49 *id.* 324; Owen *v.* N. Y. Cent. R. Co., 1 Lans. 108); and this, though the servant is not employed upon the particular thing which is defective, but upon work wholly unconnected therewith (*Id*). The rule is otherwise where the company is aware of such defects (Keegan *v.* Western R. Co., 8 N. Y. 175).

Delivery to company. The company is liable for goods placed in its cars, though the delivery may have been to the agent of an express company, which had an arrangement with the railroad company, unknown to the owner of the goods (Langworthy *v.* N. Y. & Harlem R. Co., 2 E. D. Smith, 195), and a delivery of the goods at the usual place of transacting such business, to persons authorized to receive them, and placed by such persons in the freight house to await transportation, will render the company liable as a carrier and not as a warehouseman (Coyle *v.* Western R. Corp., 47 Barb. 152), and this, though the company's agent neglected to give a receipt and enter the transaction on the company's books (*Id*). But the goods must be actually delivered to the company, by being placed in such a position that they might be taken care of by the agent having charge of the business, and under his immediate control (Grosvenor *v.* N. Y. Cent. R. Co., 39 N. Y. 34; s. c. 5 Abb. Pr. N. S. 345). Where the goods were merely deposited at a railway station, and no directions given to the agent of the company, relative to their destination; *Held* not a sufficient delivery to render the company liable for not transporting them (Spade *v.* Hudson River R. Co., 16 Barb. 383), nor is a delivery of baggage to one whom the plaintiff *supposed* to be the baggage master, sufficient to bind the company (Butler *v.* Same, 3 E. D. Smith, 571). The company is not liable for an overcoat left in its cars through the forgetfulness of a passenger, where it has exercised ordinary care for securing it (Tower *v.* Utica & Schnectady R. Co., 7 Hill, 47).

But where by a general regulation of the company, it became the duty of its agents to take charge of property inadvertently left in the cars, and provide for its safe keeping in the depot, where the owner might apply for it, the company with respect to such property must be regarded as a bailee for hire (Morris *v.* Third Ave. R. Co., 1 Daly, 202; s. c. 23 How. Pr. 345), and is liable for conversion, upon delivery of said property to a person who had no right or claim to it (*Id*); though not, where it had exercised all the care and vigilance that could reasonably be expected under the circumstances (*Id*).

Delay in transportation. This section contemplates that it may not always be in the power of the company, to dispatch either passengers or freight immediately upon their arrival at the starting point, or junction, and therefore allows the company a reasonable time after the person or property is offered for transportation, to set the same in motion (Wibert *v.* N. Y. & Erie R. Co., 12 N. Y. 245; affirming s. c. 19 Barb. 36). What is a reasonable time must depend upon existing circumstances (*Id*). Thus where the facts showed that the defendant's road was in good order, well equipped, and that it ran as many trains as could be done with safety, and that the delay was caused by an unusual quantity of freight being delivered to it, which was forwarded without preference in the order of its receipt; *Held*, that the company was not liable (*Id*). Under such circumstances, preference may be given to perishable property over that which is not perishable, and the latter must wait (Marshall *v.* N. Y. Cent. R. Co., 45 Barb. 502). Where the company has not expressly contracted to deliver the goods within a limited time, accident or misfortune (Wiebert *v.* N. Y. & Erie R. Co., *supra*; Jones *v.* N. Y. & Erie R. Co., 29 Barb. 633; disapproving Kent *v.* Hudson River R. Co., 22 *id.* 278), or the default of another company, will excuse delay in the performance of such act (Conger *v.* Hudson River R. Co., 6 Duer, 375); though the company is liable for delay in the transportation of passengers or property, caused by acts of its employees,—as for example by a general strike (Blackstock *v.* N. Y. & Erie R. Co., 20 N. Y. 48; affirming s. c. 1 Bosw. 77), or the wilful act of the conductor (Weed *v.* Panama R. Co., 17 N. Y. 362). Mere delay in the delivery of goods is not conversion (Briggs *v.* N. Y. Cent. R. Co., 28 Barb. 515). In an action against the company for failure to carry a passenger within the appointed time, to the place for which he had taken passage, evidence that if he had arrived at the appointed time, he might have performed his errand, or that he could not, with due effort, accomplish his errand, by reason of his delay in arriving, must be introduced to prove damages (Benson *v.* New Jersey R. & Transp. Co., 9 Bosw. 412). So also, evidence of the time when he first ascertained that he could not accomplish his errand, must be produced, in order to recover his expenses, and damages to his business during an absence of several days (*Id*).

Delivery by the company. It is part of the duty of the company in transporting the goods, to seek the person to whom they are

consigned (Schroeder *v.* Hudson River R. Co., 5 Duer, 55; Browning *v.* Long Island R. Co., 2 Daly, 117), and it can only be relieved of this duty by special contract, or by proof of an opposite usuage (Schroder *v.* Hudson River R. Co., *supra*). But in the absence of the consignee, and where he has no agent to whom delivery can be made, or notice given, it may terminate its liability as a carrier, by depositing the goods in a warehouse (Northrop *v.* Syracuse &c. R. Co., 5 Abb. Pr. N. S., 425; Browning *v.* Long Island R. Co. *supra*); so also, where the consignee neglects or refuses to remove the goods, within a reasonable time fixed for their removal (Cook *v.* Erie R. Co., 58 Barb. 312). What is a reasonable time for the consignee to remove the goods after notice of their arrival, is a question of fact for the jury (Cary *v.* Cleveland & Toledo R. Co., 29 Barb. 35). The company has no lien upon the goods for the inconvenience, or expense occasioned by the neglect of the consignee to take them away, within a reasonable time after notice to him of their arrival. It must deliver up the goods on demand, and may seek its remedy on breach of contract (Crommelin *v.* N. Y. & Harlem R. Co., 4 Keyes, 90). The company is responsible for the delivery to the actual consignee (Price *v.* Oswego & Syracuse R. Co., 58 Barb. 599); though it is exonerated from its obligations, where the goods have been taken from it by legal process, provided it immediately gave proper notice of such taking (Bliven *v.* Hudson River R. Co., 36 N. Y. 403).

Liability of company. The company is liable for loss of, or injury to, property transported by it, not caused by inevitable accident or the public enemy (Camden &c. R. Co. *v.* Burke, 13 Wend. 611; Same *v* Belknap, 21 *id.* 354; Roth *v.* Buffalo &c. R. Co., 34 N. Y. 548; Jones *v.* Norwich &c. Transportation Co., 50 Barb. 193; Glasco *v.* N. Y. Cent. R. Co., 36 *id.* 557; Cary *v.* Cleveland &c. R. Co., 29 *id.* 35; Heineman *v.* Grand Trunk R. Co., 31 How. Pr. 430); and it cannot limit its liability by a regulation to the effect, that all claims for damages through loss or injury to the property transported, must be made within ten days after delivery of the goods at the station (Browning *v.* Long Island R. Co., 2 Daly, 117); and the mere fact that the plaintiff furnished the vehicles and brakemen necessary for the loading, unloading, and transportation of his property, on the road of the company, while the company furnished the motive power, does not render it less liable as a common carrier (Mallory *v.* Tioga R. Co., 39 Barb. 488). A complaint against the company for non-delivery or loss of goods, must allege (1) that the company was a common carrier; (2) that it received plaintiff's goods; (3) that for the compensation paid, (4) it undertook to carry and deliver them, and (5) the non-delivery (Bristol *v.* Rensselaer &c. R. Co., 9 Barb. 158). Where the company signed a receipt for a barrel, box, trunk, or other article shown to be hollow and to contain goods, it renders itself liable for a loss of its contents (Harmon *v.* N. Y. & Erie R. Co., 28 Barb. 323); so held, where it signed a receipt for "1 cradle," knowing that it contained a valise and wearing apparel, which latter were subsequently

lost while in its custody (*Id*). Where the company was to deliver the goods at its terminus to a second company, but on arrival at such place, it was mutually agreed for the convenience of both, that the delivery should take place the following morning, and during the night they were destroyed by fire; *Held* that the liability of the company as common carrier had not terminated (Fenner *v.* Buffalo &c. R. Co., 46 Barb. 103); but mere *delay* in delivery of the goods by the company is not conversion, and the owner can only recover for the damages which grow out of the delay (Briggs *v.* N. Y. Cent. R. Co., 28 Barb. 515). Damages for *non-delivery* of the freight entrusted to it, or the value of the goods at the place of destination, at the time they *should* have been delivered, less the charges for transportation (Davis *v.* N. Y. & Erie R. Co., 1 Hilt. 543; Rice *v.* Ontario Steamboat Co., 56 Barb. 384). A right of action against the company for not transporting and delivering goods, is assignable so as to authorize the assignee to sue in his own name (Smith *v.* N. Y. & N. H. R. Co., 28 Barb. 605; Foy *v.* Troy & Boston R. Co., 24 *id.* 382).

(*b*) **Duties of connecting roads.** The first general act relative to this subject, is found in the laws of 1847, wherein it is provided, that: Every railroad company whose railroad shall, at or near the same place, connect with, or be intersected by, two or more other railroads which are competing lines for the business to or from such railroad, shall fairly and impartially grant and afford to the proprietors of each of such connecting or intersecting railroads, equal terms of accommodations, privileges, and facilities in the transportation of cars, passengers, baggage and freight, over and upon their railroads, and over and upon such connecting or intersecting railroads; and shall also grant and afford the proprietors of each of said connecting or intersecting railroads, equal facilities in the interchange and use of passenger, baggage, freight, and other cars, so far as may be required to accommodate the business of each railroad; and also, in furnishing passage tickets to passengers who may have come over, or may wish to go over either of such connecting or intersecting railroads; and if the proprietors of either of such connecting or intersecting railroads, shall deem themselves aggrieved by the arrangements or conduct of the company with whose railroad their railroad connects in the premises, such proprietors may make application by petition to the governor of this State on giving fourteen days' notice to the companies or proprietors of the railroads with which their railroad connects, for the appointment of three commissioners, to inquire into the alleged complaints; and it shall be the duty of said governor to appoint three disinterested persons as commissioners, who shall summarily examine into the alleged grievances; and shall prescribe such regulations in the premises as will, in their judgment, secure the enjoyment of equal privileges, accommodations, and facilities to the proprietors of the said connecting or intersecting railroads, in the transportation, use, and interchange of cars, passengers, baggage, and freight, as may be required to accommodate the business of each of said railroad; and in the manageme

conduct of the several railroads connecting with each other; and the said commissioners shall also determine and fix the terms and conditions upon which such facilities and accommodations shall be afforded to each of said connecting railroads. The award of the commissioners, when approved by the Supreme Court, shall be binding on the parties for two years, and the court shall have power to compel the performance thereof by attachment, mandamus, or otherwise. And the expenses of the foregoing proceedings shall be paid by such of the parties as shall be determined on by said court (Laws 1847, chap. 222, § 1).

In 1868 certain provisions were passed to afford increased facilities for transportation on the several lines of railroads terminating at Albany and Troy, and the steamboats running between those cities and New York. Those provisions (Laws 1868, chap. 573) are as follows:

§ 1. The proprietors of any steamboat, or line of steamboats, navigating the Hudson River, are hereby authorized and empowered to furnish tickets upon being paid therefor, for the transportation of passengers from any station on the line of any railroad terminating at the city of Albany or Troy, for the conveyance of such passengers from the city of Albany or Troy to the city of New York on their said steamboats. On such tickets being furnished to any such railroad company, it shall be their duty to require their ticket agent, at any station or line of their road, to sell such tickets, and to any passenger who shall make application therefor, at a price which shall be equal to the amount of fare charged upon such road to the city of Albany or Troy, with the addition of such price as shall be fixed by the proprietor of such steamboat for the transportation of such passenger from Albany or Troy to New York.

§ 2. The proprietors of said steamboat or line of steamboats, are also authorized and empowered to furnish baggage checks for the transportation of any passenger's baggage through to the city of New York by the way of their said steamboats, and on such checks being furnished to the baggage-master, at any station on the line of said railroads, it shall be his duty to check baggage on the application of any passenger through to the city of New York, which baggage, on its arrival in the city of Albany or Troy, shall be delivered up to the authorized agent of any steamboat or line of steamboats, to be transported from the railroad to the steamboat on which such passenger contemplates going, without the check being removed from such baggage. And said baggage shall be transported from railroad station to steamboat landings, and from steamboat landing to railroad station by said steamboat owners, free of charge.

§ 3. It is hereby made the duty of every railroad company, which terminates in the city of Albany or Troy, on application being made therefor by the proprietor of any steamboat, or line of steamboats, navigating the Hudson river, to furnish them with tickets for the transportation of passengers from the city of Albany or Troy to any point on the line of

their respective roads, to be sold by such steamboat proprietors in their respective offices, and to receive and transport the baggage of any passenger which shall be checked through to any point beyond the city of Albany or Troy; such tickets to be sold and paid for to the railroad or steamboat company, which shall furnish the same at the price charged by such company for the conveyance of such passenger to the place which such ticket purports to carry him. The object and intent of this act being to compel railroad companies to furnish the same facilities to passengers going to or from the city of New York by boat as is afforded those who go by the railroad.

§ 4. If any freight shall be delivered at any station on the line of any railroad which terminates in the city of Albany or Troy for transportation to the city of New York, which is marked to go to New York *via* boat, or any particular line of boats, it shall be the duty of the railroad company, to whose agent such freight shall be delivered, to receive the same and transport it with all convenient speed to the city of Albany, and on its arrival there, the company over whose road the same has been transported, shall forthwith cause to be notified the agent of the steamboat line by which it is directed to be sent, and shall deliver the same to such agent, with the bill of charges thereon due such railroad company, for the payment of which charges the proprietor or proprietors of such steamboat line shall be responsible. But the railroad company transporting such freight shall not charge for its transportation over its road, any greater sum than they charge for carrying the same kind of freight the same distance over their road if the same were transported from Albany or Troy to New York by railroad, and any freight delivered by the authorized agent of any steamboat or steamboat company, for transportation over any railroad, which shall have been brought from New York by boat, shall be transported by such railroad company to its place of destination for the same price as it would be if brought from New York by railroad.

§ 5. Any railroad company in this State, whose agent or servants shall neglect or refuse to sell tickets or furnish a check, as is provided for in this act, when the same shall have been furnished them, shall be liable to the same penalty as is provided for in section thirty-seven of the act passed April second, eighteen hundred and fifty, entitled "An act to authorize the formation of railroad corporations and to regulate the same," and no fare or toll shall be collected or received from any passenger whose application for such ticket or check shall have been refused, for riding over the road of said company, and in addition thereto, the said railroad corporation shall be liable to a penalty of two hundred and fifty dollars, to be recovered in the name of the proprietor or proprietors of any steamboat line navigating the Hudson river, in any court of competent jurisdiction, for each day they shall neglect or refuse to comply with the provisions of this act, unless such neglect or refusal is caused by a failure on the part of such steamboat proprietor or proprietors to furnish tickets and checks as herein provided for.

§ 6. The provisions of this act, so far as relates to the sale of tickets and furnishing of checks, shall not apply to either the Hudson River or New York and Harlem Railroad companies.

Liability for loss of freight on connecting lines.—Any railroad company receiving freight for transportation shall be entitled to the same rights and be subject to the same liabilities as common carriers. Whenever two or more railroads are connected together, any company owning either of said roads, receiving freight to be transported to any place on the line of either of the said roads so connected, shall be liable as common carriers for the delivery of such freight at such place (*a*). In case any such company shall become liable to pay any sum by reason of the neglect or misconduct of any other company or companies, the company paying such sum may collect the same of the company or companies by whose neglect or misconduct it became so liable. (Laws 1847, chap. 270, § 9.)

(*a*) **Liability of contracting company.**—The company receiving goods for transportation may lawfully contract to deliver the same at a point beyond the terminus of its road (Schroeder *v.* Hudson River R. Co., 5 Duer, 55; Quimby *v.* Vanderbilt, 17 N. Y. 306), and where it receives compensation for the entire route, it is bound to perform the entire service (Hart *v.* Rensselaer &c. R. Co., 8 N. Y. 37; Wilcox *v.* Parmelee, 3 Sandf. 61; Cary *v.* Cleveland & Toledo R. Co., 29 Barb. 35; Foy *v.* Troy & Boston R. Co., 24 *id.* 382). If it intended to restrict its liability to injuries occurring on its own road, it should provide for such limitation in its contract (Foy *v.* Troy & Boston R. Co., *supra*). But where it does not appear that the company received compensation for the entire distance, its liability as common carrier is terminated upon delivery of the goods at the end of its route, to another carrier, and thereafter its liability, if any, is as a forwarder (Hempstead *v.* N.Y. Cent. R. Co., 28 Barb. 485; Fenner *v.* Buffalo &c. R. Co., 46 Barb. 103; Dillon *v.* N. Y. & Erie R. Co., 1 Hilt. 231); unless it neglected to give necessary instructions, as to whom to deliver the property (Hempstead *v.* N. Y. Cent. R. Co., *supra*). The company is bound by any instructions given by the owner, with reference to the selection of a carrier beyond its route (Johnson *v.* Same, 33 N. Y. 610).

Liability of intermediate companies.—It is the duty of the second or subsequent company upon receipt of the goods from the first, to forward the same immediately (Michaels *v.* N. Y. Cent. R. Co., 30 N. Y. 564), and deliver or attempt to deliver them to the next carrier on the route beyond (McDonald *v.* Western R. Corp., 34 N. Y. 497). It cannot excuse itself from the first of these duties, by a regulation that such goods were not to be forwarded unless accompanied by a bill of back charges (Michaels *v.* N. Y. Cent. R. Co., *supra*); nor will a mere unloading and storing of the goods, exempt it from the second duty (McDonald *v.* Western R. Corp., *supra*). Such company is liable for a loss of property while in its charge (Hart *v.* Rensselaer &c. R. Co., 8 N. Y. 37; McCormick *v.* Hudson River R. Co., 4 E. D. Smith, 181; Wing *v.* N. Y. & Erie R. Co., 1 Hilt, 235), but is not liable for damage done to the goods before they came under its charge (Smith *v.* N. Y. Cent. R. Co., 43 Barb. 225; Hunt *v.* N. Y. & Erie R. Co., 1 Hilt. 228). And the liability of such company being founded on contract and not on the common law, it is entitled to the benefit of any exceptions existing between the owner of the goods and the former carrier (Manhattan Oil Co. *v.* Camden &c. R. Co., 52 Barb. 72; s. c. 5 Abb. Pr. N. S. 289). The provisions of this section apply as well where one of the connecting roads is without the State (Root *v.* Great Western R. Co., 2 Lans. 199), as where all are within it (Hart *v.* Rensselaer & Saratoga R. Co., 8 N. Y. 37); and to a foreign corporation, being one of such connecting roads (Root *v.* Great Western R. Co., *supra;* Cary *v.* Cleveland & Toledo R. Co., 29 Barb. 35), whether such company have a terminus within the State or not (*Id*).

Check to be affixed to baggage.—A check shall be affixed to every parcel of baggage, when taken for transportation, by the agent or servant of such corporation, if there is a handle, loop or fixture, so that the same can be attached upon the parcel or baggage so offered for transportation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and if such check be refused on demand, the corporation shall pay to such passenger the sum of ten dollars, to be recovered in a civil action; and further, no fare or toll shall be collected or received from such passenger, and if such passenger shall have paid his fare, the same shall be refunded by the conductor in charge of the train; and on producing said check, if his baggage shall not be delivered to him, he may

himself be a witness in any suit brought by him, to prove the contents and value of said baggage. (Laws 1850, chap. 140, § 37.)

What deemed baggage. Such articles as the traveler usually carries with him for his personal use, convenience, instruction, or amusement by the way, are deemed baggage within the rule of the company's liability (Van Wyck *v.* Howard, 12 How. Pr. 147; Hawkins *v.* Hoffman, 6 Hill, 586). Thus tools used by the passenger in his trade (Davis *v.* Cayuga &c. R. Co., 10 How. Pr. 330); a gun carried in his trunk (*Id*); articles of jewelry usually worn about the person, as a watch &c. placed in his trunk (McCormick *v.* Hudson River R. Co., 4 E. D. Smith, 181), and even wearing apparel for members of his family, as material for two dresses (Dexter *v.* Syracuse &c. R. Co., 42 N. Y. 326), are property included under the term "baggage," and recoverable as such. But it does not include samples of merchandise which the traveler wishes to sell (Hawkins *v.* Hoffman, 6 Hill, 586); nor masonic regalia, or presents intended for his friends (Nevins *v.* Bay State Steamboat Co., 4 Bosw. 225); nor material for a dress for his landlady (Dexter *v.* Syracuse &c. R. Co., 42 N. Y. 326). Nor is a trunk containing nothing but merchandise (Pardee *v.* Drew, 25 Wend. 459), or silver ware (Bell *v.* Drew, 4 E. D. Smith, 59), baggage for which the carrier is liable. Nor is money included in the term baggage (Grant *v.* Newton, 1 E. D. Smith, 95; Orange County Bank *v.* Brown, 9 Wend. 85; Bell *v.* Drew, 4 E. D. Smith, 59), though an exception exists in favor of money carried for traveling expenses (Merrill *v.* Grinnell, 30 N. Y. 594; overruling in effect Grant *v.* Newton, 1 E. D. Smith, 95). The question what is a reasonable amount of baggage, is to be determined by the jury (Nevins *v.* Bay State Steamboat Co. 4 Bosw. 225; Rawson *v.* Pennsylvania R. Co. 2 Abb. Pr. N. S. 220); so also as to the amount of money allowed for traveling expenses (Merrill *v.* Grinnell, *supra*), in determining which, considerations as to the length of the journey, and to some extent the wealth of the traveler, are admissible (*Id*).

Liability of company for baggage. The company, except in cases where the loss occurs through the enemies of the country, or inevitable accident, is bound to deliver safely to each passenger, his baggage, in a reasonable time and manner, after its arrival at the place of destination (Camden &c. R. & T. Co. *v.* Burke, 13 Wend. 611; Roth *v.* Buffalo &c. R. Co., 34 N. Y. 548; Jones *v.* Norwich &c. Transportation Co., 50 Barb. 193; Glasco *v.* N. Y. Cent. R. Co., 36 *id.* 557; Cary *v.* Cleveland &c. R. Co., 29 *id.* 35); nor is it material whether the baggage is in excess of the quantity allowed to a passenger, unless there is some agreement to the contrary (Glasco *v.* N. Y. Cent. R. Co., *supra*); nor will a notice that all baggage is at the risk of the owner, excuse the company from liability for loss of baggage arising from its negligence, or the in-

sufficiency of its machinery or vehicles (Camden &c. R. & T. Co. *v.* Burke, *supra;* Same *v.* Belknap, 21 Wend. 354). Where the passenger refuses or neglects to present his check for, and remove his baggage within a reasonable time, the strict and rigorous liability of the company is ended, and thereafter it retains the baggage as a gratuitous bailee (Roth *v.* Buffalo &c. R. Co., *supra;* Jones *v.* Norwich &c. Transportation Co., *supra;* Holdridge *v.* Utica & Black River R. Co., 56 Barb. 191). But where the company retained the baggage on request until it could be sent for, its liability as common carrier continues until a delivery or tender to the owner (Curtis *v.* Avon &c. R. Co., 49 Barb. 148), and evidence that the passenger was a cripple, and unable to take charge of his baggage personally, is admissible to show that there was good reason for making such arrangement, and that he was guilty of no negligence in not calling for, and taking charge of his baggage upon arrival at the place of destination (*Id*). What is a reasonable time for the delivery of baggage is a mixed question of law and fact, to be determined by the jury, under the instructions of the court when the facts are unsettled; but when there is no dispute about the facts, then by the court alone (Roth *v.* Buffalo &c. R. Co., *supra;* Gilhooly *v.* N. Y. & Savannah Steam Navigation Co., 1 Daly, 197). In an action against the company to recover for lost baggage, the fact that the plaintiff was a passenger, and that the company took his baggage; *Held* sufficiently proved by the passenger's possession of the baggage check, and testimony of the baggage-master as to the custom of giving checks (Davis *v.* Cayuga &c. R. Co., 10 How. Pr. 330), though testimony that the baggage was delivered to a person whom witness supposed to be the baggage-master, is not enough to charge the company with its receipt (Butler *v.* Hudson River R. Co., 3 E. D. Smith, 571). In such an action, when it appears on trial that the trunk was lost, it is not necessary to show a demand of the trunk, and refusal by the company to deliver the same, before the suit was brought (Garvey *v.* Camden & Amboy R. Co., 1 Hilt. 280); proof of delivery and loss is *prima facie* sufficient to entitle the plaintiff to recover (*Id*). An agent of the company, having charge of the depot, and the freight therein, is the proper person to inquire of respecting lost baggage, and a conversation between the plaintiff and such person relative to lost baggage, is admissible as *res gestæ* (Curtis *v.* Avon &c. R. Co., 49 Barb. 148). Where the plaintiff was in the clothing business and engaged in the manufacture of clothing, he was *held*, a competent witness to prove the value of materials for clothing (Browning *v.* Long Island R. Co., 2 Daly, 117).

Same; requisites of check.—It shall be the duty of every railroad company hereafter to furnish and attach checks to each separate parcel of baggage which they by their agents or officers receive from any person for transportation as ordinary or extraordinary

baggage in their baggage cars accompanying their passenger trains, and they shall also furnish to such a person duplicate check or checks having upon it or them a corresponding number to that attached to each parcel of baggage; said checks and duplicates shall be made of some proper metallic substance, of convenient size and form, plainly stamped with numbers, and each check furnished with a convenient strap or other appendage for attaching to baggage, and accompanying it a duplicate, to be delivered to the person delivering or owning such baggage. And whenever the owner of said baggage or other person shall, at the place where the cars usually stop, to which said baggage was to be transported, or at any other regular stopping place, present said duplicate check, or checks to the officer or agent of the railroad or any railroad over any portion of which said baggage was transported, they shall deliver it up to the person so offering the duplicate check or checks without unnecessary delay. And a neglect or refusal on the part of any railroad company, its officers or agents, to furnish and attach to any person's ordinary traveling baggage or extraordinary baggage, if conveyed by their passenger train, a suitable check or checks, and to furnish to such person proper duplicate or duplicates, shall forfeit and pay to such person or owner, for every such refusal or neglect, the sum of ten dollars, to be recovered in an action for debt. (Laws 1847, chap. 272, § 6.)

Unclaimed freight, how disposed of. — Every railroad company which shall have had unclaimed freight, not perishable, in its possession for a period of one year at least, may proceed to sell the same at public auction, and out of the proceeds may retain the charges of transportation and storage of such

freight, and the expenses of advertising and sale thereof; but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale in the State paper, and also in a newspaper published at or nearest the place at which such freight was directed to be left, and also at the place where such sale is to take place; and said notice shall contain a description of such freight, the place at which and the time when the same was left, as near as may be, together with the name of the owner or person to whom consigned, if known; and the expenses incurred for advertising shall be a lien upon such freight, in a ratable proportion, according to the value of each article or package or parcel, if more than one. (Laws 1854, chap. 282, § 10.)

In case such unclaimed freight shall, in its nature, be perishable, then the same may be sold as soon as it can be, on giving the notice required in the preceding section, after its receipt at the place where it was directed to be left. (Laws 1854, chap. 282, § 11.)

Such railroad company shall make an entry of the balance of the proceeds of the sale, if any, of each parcel of freight owned by or consigned to the same person, as near as can be ascertained, and at any time within five years thereafter shall refund any surplus so retained to the owner of such freight, his heirs or assigns, on satisfactory proof of such ownership. (Laws 1854, chap. 282, § 12.)

Same; provision as to sale of unclaimed baggage.—Every railroad company which shall have had unclaimed freight or baggage, not perishable, in its possession for the period of at least one year, may proceed and sell the same at public auction, after giving notice to that effect in the State paper once a week for

not less than four weeks, and for a like period in a newspaper other than the State paper, published at the place designated for the sale, and also in one published in the city of New York (said notice shall contain as near as practicable a description of such freight or baggage, the place and time when left, together with the name of the owner of the freight, or person to whom consigned, if the same be known). All moneys arising from the sale of freight or baggage as aforesaid after deducting therefrom charges and expenses for transportation, storage, advertising, commissions for selling the property, and the amount previously paid for the loss or non-delivery of freight or baggage, shall be deposited by the company making such sale, accompanied with a report thereof, and proofs of advertisement, with the comptroller, for the benefit of the general fund of the State, and shall be held by him in trust for reclamation by the persons entitled, or who may become entitled, to receive the same. No sale as herein provided shall be valid unless a copy of the notice above specified shall be served upon the comptroller for at least two weeks prior to the time designated for such sale. (Laws 1857, chap. 444, § 3.)

In case such unclaimed freight or baggage shall, in its nature, be perishable, then the same may be sold as soon as it can be, at the best terms that can be obtained. (Laws 1857, chap. 444, § 4.)

See Laws 1837, chap. 300.

Transportation of live stock.—No railroad company in this State, in the carrying and transportation of cattle, sheep, or swine, shall confine the same in cars for a longer period than twenty-eight consecutive hours, unless delayed by storms or other accidental causes, without unloading for rest, water and feed-

ing, for a period of at least ten consecutive hours. In estimating such confinement, the time the animals have been confined without such rest on connecting roads from which they are received shall be computed, it being the intention to prevent their continuous confinement beyond twenty-eight hours, except upon the contingencies herein stated. Nothing in this act contained shall require the unloading of cattle, sheep, or swine, from the cars of the Buffalo and State Line railroad before their arrival at Buffalo, and the Atlantic and Great Western railroad, before they arrive at Salamanca. (Laws 1866, chap. 560, § 1.)

The company is liable for injury to animals which it undertakes to carry, though not for injuries arising from fright of the animals, their refusal to eat &c. nor for injuries from an occurrence incidental to such transportation, and which the company could not have prevented (Clarke *v.* Rochester &c. R. Co., 14 N. Y. 570). Thus the company was *held* liable for the loss of a horse strangled by his halter in the car (*Id*); and this though the owner assisted in fastening him, and was allowed a passage on the train. Where the cattle train was detained at a station a number of hours, in constant readiness to start on the arrival of a belated train, and the owner proposed to take the cattle out and water them, but was informed that the train might start within a period too brief for that purpose; *Held*, that it was for the jury to decide whether this amounted to a refusal to permit the unloading of the animals (Harris *v.* Northern Indiana R. Co., 20 N. Y. 232).

A contract between the company and the owner of live stock for their transportation, whereby the latter undertakes "all risk of loss, injury, damage, and other contingencies, in loading, unloading, conveyance and otherwise," will exempt the company from liability for injury sustained by the animals from unnecessary confinement, and want of food and water (Heineman *v.* Grand Trunk R. Co., 31 How. Pr. 430), but evidence that the owner was allowed a free passage on the train does not establish the fact that he was to attend to the safety of the animals during the journey (Clarke *v.* Rochester &c. R. Co., *supra*).

Expense attendant on such care of animals provided for.—Provided the owner or person in charge of said animals refuses or neglects to pay for the care and feed of animals so rested, the railroad

company may charge such expense to the owner or consignee, and retain a lien upon the animals until the same is paid; and *Provided, further*, That no claim of damages for detention shall be recovered by the owner or shipper of any animals for the time they are detained under the provisions of this act. (Laws 1866, chap. 560, § 2.)

Penalty for violation of act.—Any railroad company, owner, consignee, or person in charge of said cattle, sheep, or swine, who shall violate any provision of this act, shall, for each and every such violation, be liable for and forfeit and pay a penalty in the sum of one hundred dollars, to be sued for and collected in any court having jurisdiction, by any person, in the name of the people of the State of New York, one-half of the penalty, when collected, to belong to the informer, and the balance to be paid to the State Treasurer of the State of New York. (Laws 1866, chap. 560, § 3.)

Repeal of canal tolls.—It shall not be necessary for any railroad company in this State to pay any sums of money into the treasury of this State, on account of the transportation of property on any railroad, on and after the first day of December, in the year eighteen hundred and fifty-one. (Laws 1851, chap. 497, § 1.)

Same.—All acts and parts of acts requiring the payment of State tolls by any railroad company, for the transportation of property on any railroad, are, after the first day of December next, so far as they conflict with this act, hereby repealed. (Laws 1851, chap. 497, § 3.)

The effect of this act is to repeal section 29, of the general railroad act of 1850. It is not unconstitutional as violating article seven, of the constitution of 1846, which pledges the revenues of the canals to certain purposes. The tolls imposed on freight carried on railroads, although payable to the commissioners of the canal fund, were not part of the revenues of the canals (People *v.* N. Y. Cent. R. Co., 24 N. Y. 485; affirming s. c. 34 Barb. 123). Canal tolls on neat cattle, horses, sheep, and fresh meats, carried on any railroad, had been previously repealed (Laws 1850, chap. 268, § 1).

Transportation of United States mail.—Any such corporation shall, when applied to by the postmaster-general, convey the mails of the United States on their road or roads respectively; and in case such corporation shall not agree as to the rate of transportation therefor, and as to the time, rate of speed, manner and condition of carrying the same, it shall be lawful for the governor of this State to appoint three commissioners, who, or a majority of them, after fifteen days' notice in writing of the time and place of meeting to the corporation, shall determine and fix the prices, terms and conditions aforesaid; but such price shall not be less for carrying said mails in the regular passenger trains, than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains, and a fair compensation for the post-office car. And in case the postmaster-general shall require the mail to be carried at other hours, or at a higher speed than the passenger trains are run, the corporation shall furnish an extra train for the mail, and be allowed an extra compensation for the expenses, and wear and tear thereof, and for the service, to be fixed as aforesaid. (Laws 1850, chap. 140, § 34.)

See Laws 1846, chap. 215, § 17; Laws 1845, chap. 149. The mail agent has a right of action against the company for an injury sustained by him, but the basis of the liability is not the contract between the

postmaster-general and the company, but the negligence of the latter. The contract, however, may be resorted to, to establish the fact that the plaintiff was not a trespasser on the train, but became a passenger with the assent of the company (Nolton *v.* Western R. Corp., 15 N. Y. 444; affirming s. c. 10 How. Pr. 97).

Penalty for exacting excessive fare.—Any railroad company, which shall ask and receive a greater rate of fare than that allowed by law, shall forfeit fifty dollars, which sum may be recovered, together with the excess so received, by the party paying the same, but it shall be lawful and not construed as extortion for any railroad company to take the legal rate of fare for one mile, for any fractional distance less than a mile. (Laws 1857, chap. 185, § 1.)

These provisions do not apply to city railroads (Hoyt *v.* Sixth Ave. R. Co., 1 Daly, 528; Moneypenny *v.* Same, 35 How. Pr. 452; s. c. 4 Abb. Pr. N. S. 357; s. c. 7 Robt. 328). Under the legal tender Act of Congress (Feb. 25, 1862), railroad companies are bound to receive United States notes issued in pursuance of the act, at the value expressed on the face of them, in payment of fare, and they are guilty of extortion under the above section, for exacting payment of the legal fare in gold or silver coin, or its equivalent in currency (Lewis *v.* N. Y. Cent. R. Co., 49 Barb. 330). Where the company was authorized to demand and receive five cents extra fare, from a passenger who neglected to purchase a ticket before entering the cars, it can collect the same, only when the passenger fails to purchase his ticket at an established ticket office that is open. Where the office is not open, no ticket can be procured, and the penalty is incurred under such circumstances, by the exaction of the addition to the regular fare (Nellis *v.* N. Y. Cent. R. Co., 30 N. Y. 505; Chase *v.* Same, 26 *id.* 523; Porter *v.* Same, 34 Barb. 353), and this, though the conductor has no orders to exact such additional fare (Porter *v.* N. Y. Cent. R. Co., *supra*).

Rate of fare.—Defined to be the price of passage, or the sum paid or to be paid for carrying the passenger (Chase *v.* N. Y. Cent. R. Co., 26 N. Y. 523).

Ejection of passenger for non-payment of fare.—If any passenger shall refuse to pay his fare, it shall be lawful for the conductor of the train and the servants of the corporation to put him and his baggage

out of the cars, using no unnecessary force, at any usual stopping place, or near any dwelling house, as the conductor shall elect, on stopping the train. (Laws 1850, chap. 140, § 35.)

A passenger may be ejected from the cars in a proper manner, whenever he refuses to comply with a requirement of the corporation to exhibit his ticket (Vedder *v.* Fellows, 20 N. Y. 126; Hibbard *v.* N. Y. & Erie R. Co., 15 *id.* 455; Northern R. Co. *v.* Page, 22 Barb. 130; Willetts *v.* Buffalo &c. R. Co., 14 *id.* 585; Walker *v.* Dry Dock &c. R. Co., 33 How. Pr. 327; Barker *v.* Coflin, 31 Barb. 556); or for a refusal to pay his fare (Sandford *v.* Eighth Ave. R. Co., 23 N. Y. 343; reversing s. c. 7 Bosw. 122; Barker *v.* N. Y. Cent. R. Co., 24 N. Y. 599; affirming s. c. *sub nom.* Page *v.* N. Y. Cent. R. Co., 6 Duer, 523; Beebe *v.* Ayres, 28 Barb. 275). So where by accident, or through his own mistake the passenger was carried off from his intended journey, for which he had procured a ticket, he is liable to be ejected on refusal to leave the car or to pay his fare for the route he is actually traveling (Barker *v* N. Y. Cent. R. Co., 24 N. Y. 599; affirming s. c. *sub nom.* Page *v.* N. Y, Cent. R. Co., 6 Duer, 523). But no conductor or collector, who does not wear a badge on his hat or cap indicating his office, is entitled to demand or receive from the passenger, his fare or ticket (Laws 1850, chap. 140, § 30). The conductor has also authority to eject the passenger for noisy and disgraceful conduct (such as grossly profane and indecent language); or such, as disturb the peace and safety of the other passengers (People *v.* Caryl, 3 Park. Cr. 326). The driver of a city railroad car, has authority in like manner, to eject a person from the platform of the car, when in his judgment such person is there without right, or contrary to the regulations of the company (Meyer *v.* Second Ave. R. Co., 8 Bosw. 305). But the servants of the company are limited to the use of just so much force, as may effect the lawful expulsion, and no more (per Brown, J., Hibbard *v.* N. Y. & Erie R. Co., *supra*), and the company is liable for any circumstances of aggravation, or excessive violence, which may attend a forcible expulsion committed within the instructions of the company (Sanford *v.* Eighth Ave. R. Co., *supra*); though not for a malicious excess (Hibbard *v.* N. Y. & Erie R. Co., *supra*); unless the passenger was wrongfully ejected (Meyer *v.* Second Ave. R. Co., *supra*). Where a person in attempting to enter a railroad car without a ticket, was assaulted by the brakeman stationed there to see that passengers had procured tickets before entering the cars; *Held*, that it was a joint trespass for which an action against the company or its employee would lie jointly or severally (Priest *v.* Hudson River R. Co., 40 How. Pr. 456), and is barred by the two years statute of limitation (*Id*).

Unauthorized Sale of Tickets.—No person other than the agents or employees of railroad, steamboat, or steamship companies of this State, duly appointed by them for that purpose, by a proper authority in writing, shall offer for sale or sell within this State, any ticket or tickets, or any printed or written instrument issued by, or purporting to have been issued by any railroad, steamboat or steamship company, in this State or elsewhere, for the transportation of any passenger or passengers, upon any such railroad, steamboat or steamship, or any instrument wholly or partly printed or written, delivered for the purpose or upon the pretense of the procurement to such passenger or passengers, of any such ticket or tickets, or in any other manner, charge, take or receive any money as a consideration or price for such passage, or for the procurement of such passage ticket or tickets; and no ticket or tickets, or other evidence as aforesaid, shall be sold or offered for sale by the said agents or employees, except at the offices designated for that purpose by the said companies respectively, or at offices conveniently located by agents of other duly organized railway companies, and at prices not exceeding their regular established rates. (Laws 1857, chap. 470, § 1; Am'd Laws 1868, chap. 820, § 1.)

The words "or at offices conveniently located by agents of other duly organized railway companies," have been rendered inapplicable to the counties of New York and Kings (Laws, 1868, chap. 820, § 4).

Deposition of witnesses respecting same.—Whenever any person or persons shall be complained of and arrested for violating any of the provisions of the first section of this act, it shall be the duty of the magistrate before whom such complaint is made, to take and reduce to writing, in the presence of the per-

son or persons complained of, the evidence of any witness which may be offered, either on behalf of the prosecution or the party accused, and the depositions so taken shall be respectively subscribed by the witnesses making the same, and certified by the magistrate, and when so taken and certified, the said deposition shall be filed in the office of the clerk of the county in which the same shall be taken. Upon the trial of any person or persons charged with any offence under the provisions of this act, the testimony taken as aforesaid may be read by either party, with the like effect as if the said witness or witnesses were sworn in open court upon said trial; provided, it shall appear therein that the witness or witnesses were, at the time of taking the same, residents of another state, territory or province, or are immigrating from a foreign country, or are residents of this state, and on their way to some other state, territory or province. (Laws 1857, chap. 470, § 2.)

Penalty for violation of act.—Any person violating the provisions of this act, shall upon conviction, be deemed guilty of a misdemeanor, and be punished by a fine of not less than one hundred dollars, or by imprisonment of not less than three months, or by both such fine and imprisonment. (Laws 1857, chap. 470, § 3.)

Regarding theft of railroad tickets.—Every person who shall be convicted of stealing, taking and carrying away any railroad passenger ticket or tickets, prepared for sale to passengers, previous to or after the sale thereof, being the personal property of any railroad company, or of any other corporation or corporations, or of any person or persons, shall be adjudged guilty of grand or petit larceny, as prescribed in the following section. (Laws 1855, chap. 499, § 1.)

Same.—If the price or prices authorized to be charged for such ticket or tickets, on a sale thereof, shall exceed the sum of twenty-five dollars, such price or prices shall be deemed the value of such ticket or tickets, and the offence of stealing, taking and carrying away the same, shall be adjudged grand larceny, and the person convicted of the same shall be imprisoned in a state prison for a term not exceeding five years; but if such price or prices shall only amount to twenty-five dollars or under, the offence of stealing, taking and carrying away such ticket or tickets shall be adjudged guilty of petit larceny, and the person convicted of the same shall be punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment. (Laws 1855, chap. 499, § 2.)

Regarding forged or counterfeit tickets.—Every person who shall be convicted of having forged, counterfeited, or falsely altered any railroad ticket mentioned or referred to in either of the preceding sections of this act, or of having sold, exchanged, or delivered for any consideration, any such forged or counterfeited railroad ticket, knowing the same to be forged or counterfeited, with intent to injure or defraud, or of having offered any such forged or counterfeited railroad ticket for sale, exchange or delivery, for any consideration, with the like knowledge and intent, or of having received any such forged or counterfeited railroad ticket upon a sale, exchange or delivery, for any consideration, with the like knowledge and intent, shall be adjudged guilty of forgery in the third degree, and shall be punished in like manner as is prescribed by law in cases of conviction of forgery in the third degree. (Laws 1855, chap. 499, § 4.)

Same.—Every person who shall have in his possession any such forged or counterfeited railroad ticket, as mentioned or referred to in the next preceding section, knowing the same to be forged, counterfeited or falsely altered, with intention to injure or defraud by uttering the same as true or false, or by causing the same to be uttered, or by the use of the same to procure a passage in the cars of the railroad company by which such ticket purports to have been issued, shall be subject to the punishment provided by law for forgery in the fourth degree. (Laws 1855, chap. 499, § 5.)

What deemed railroad ticket.—Railroad passenger tickets of any railroad company, as well before the same shall have been issued to its receivers or other agents for sale, as after, and whether endorsed by such receivers or other agents or not, are to be deemed railroad tickets within the meaning of this act. (Laws 1855, chap. 499, § 3.)

Immigrant ticket.—Every ticket, receipt or certificate, which shall be made or issued by any company, association or person, for the conveyance of any immigrant, second class, steerage or deck passengers, or as evidence of their having paid for a passage, or being entitled to be conveyed from either or any of the points or places in the first section of this act mentioned (*a*), to any other place or places, shall contain or have endorsed thereon, a printed statement of the names of the particular railroad or railroads, and of the line or lines of steamboats, canal-boats and propellers, or the particular boats or propellers, as the case may be, which are to be used in the transportation and conveyance of such passengers, and also the price or rate of fare charged or received for the trans-

portation and conveyance of any such passenger or passengers, with his or their baggage. (Laws 1855, chap. 474, § 2.)

(*a*) "From the city, bay or harbor of New York, to any point or place, distant more than ten miles therefrom, or from the cities of Albany, Troy and Buffalo, the town or harbor of Dunkirk, or the suspension bridge, to any other place or places." (Laws 1855, chap. 474, § 1. *Vide post*, p. 189.)

Sections seven, eight and nine of chapter 218, laws 1853, apply only to the selling of immigrant passage tickets, *i. e.* tickets used between New York and some other port; and do not apply to railroad transportation (Laws 1855, chap. 474, §§ 3, 4).

Compensation allowed for transportation of immigrants.—It shall not be lawful for any person or persons to demand or receive, or bargain for the receipt of any greater or higher price or rate of fare for the transportation and conveyance of any such immigrant, second class, steerage or deck passengers, with their luggage, or either, from either or any of the points or places in the first section of this act mentioned (*a*), to any other point or place, than the prices or rates contained in the statements which shall be delivered to the mayors of the cities of New York, Albany, Troy, and Buffalo, and said commissioners, respectively, as in the said first section provided for, or the price or rates which shall be established and fixed for the transportation and conveyance of such passengers and their luggage, or either, by the proprietors or agents of the line or lines, or means of conveyance by which such passenger or passengers and their luggage are to be transported or conveyed. In all cases each immigrant over four years of age conveyed by railroad shall be furnished with a seat with a permanent back to the same, and when conveyed by steamboat, propeller or canal boat, shall be allowed at least two and one-half feet square in the clear on deck. Such deck shall

be covered and made water-tight over head, and shall be properly protected at the outsides, either by curtains or partitions, and shall be properly ventilated. (Laws 1855, chap. 474, § 3.)

(*a*) See section one of this act, *post*, p. 189.

Penalty for violation of act.—Any company, association, person or persons, violating or neglecting to comply with any of the provisions of the first or second sections of this act (*a*), shall be liable to a penalty of two hundred and fifty dollars for each and every offence, to be sued for and recovered in the name of the people of this state; and every person violating any of the provisions of the third section of this act (*b*), shall be deemed guilty of a misdemeanor, and on conviction thereof, the person offending may be punished by a fine of two hundred and fifty dollars, or by imprisonment, not exceeding one year, or by both fine and imprisonment, in the discretion of the court, one-half of which fines, when recovered, shall be paid to the informer, and the other half into the county treasury, where the action shall be tried, or the conviction had. (Laws 1855, chap. 474, § 4.)

(*a*) See section one (*post*, p. 189), and section two (*ante*, p. 186).

(*b*) See section three (*ante*, p. 187).

Proceedings on arrest of offender.—It shall be the duty of every magistrate who shall issue a warrant for the apprehension of any person or persons for violating the provisions of the third section of this act (*a*), within twenty-four hours after such person or persons shall have been taken and brought before him, to take the testimony of any witness who may be offered to prove the offence charged, in the presence of the accused, who may, in person or by counsel, cross-exam-

ine such witness. The testimony so taken shall be signed by the witness, and be certified by the magistrate, and in case such magistrate shall commit the accused to answer the charge, he shall immediately thereafter file the testimony so taken, with the district attorney of the county in which the offence was committed, to be used on the trial of or any further proceedings against the accused; and the testimony so taken shall be deemed valid and competent for that purpose, and be read and used with the like effect as if such witness were orally examined on such trial or proceedings. After the testimony of such witness shall be so taken, he shall not be detained, nor be imprisoned, or compelled to give any recognizance for his future appearance as a witness on any trial or proceeding thereafter to be had in the premises. (Laws 1855, chap. 474, § 5.)

(*a*) See section three (*ante*, p. 187).

Annual statement of charges for transportation of immigrants.—It shall be the duty of all companies, associations, and persons, hereafter undertaking to transport, or convey, or engaged in transporting or conveying, by railroad, steamboat, canal boat or propeller, any immigrant, second class, steerage or deck passenger, from the city, bay or harbor of New York, to any point or place, distant more than ten miles therefrom, or from the cities of Albany, Troy, and Buffalo, the town or harbor of Dunkirk, or the Suspension bridge, to any other place or places, to deliver to the mayors of the city of New York, Albany, Troy, and Buffalo, on or before the first day of April, in each and every year, a written or printed statement of the price, or rates of fare, to be charged by such company, association or person, for the conveyance of

such immigrant, second class, steerage and deck passengers respectively, and the price per hundred pounds for the carriage of the luggage, and the weight of luggage to be carried free of such passengers from and to each and every place, from and to which any such company, association or person, shall undertake to transport and convey such passengers; and such prices or rates shall not exceed the prices and rates charged by the company, association or person, after the time of delivering such statement to the said mayors; and such statement shall also contain a particular description of the mode and route by which such passengers are to be transported and conveyed, specifying whether it is to be by railroad, steamboat, canal boat or propeller, and what part of the route is by each, and also the class of passage, whether by immigrant trains, second class, steerage or deck passage. In case such companies, association, or person, shall desire thereafter to make any change or alteration in the rates or prices of such transportation and conveyance, they shall deliver to the said mayors respectively a similar statement of the prices and rates as altered and changed by them; but the rates and prices so changed and altered, shall not be charged or received until five days after the delivery of the statement thereof to the said mayors respectively. (Laws 1855, chap. 474, § 1.)

Sale of immigrant tickets in the city of New York, regulated.—It shall not be lawful for any railroad company, or for any agent, employee or other officer of any railroad company, or for any other person, to sell, offer for sale, or otherwise dispose of any ticket or tickets, or written or printed instruments, or instruments partly written and partly

printed, for the transportation or conveyance on or by any railroad or steamboat, of any immigrant, or deck, or steerage, or second class passenger, arriving at the port of New York from a foreign country, at any place or places in the city of New York, except such as may be designated by the Commissioners of Emigration; which place or places may from time to time, as they may deem best, be changed by the said commissioners; provided, however, that nothing herein contained shall prevent any railroad company from selling tickets to any persons at the rates of fare charged for first class passengers, nor from selling tickets at the principal ticket offices of such company, to immigrants and other second class passengers, provided such company has at the same time an agent who shall sell tickets at the place designated by the said commissioners for selling tickets to immigrants. The Commissioners of Emigration shall furnish every railroad company of this State desiring such privilege to have an agent at each and every place so designated by them, to sell tickets to immigrants and other second class passengers; but if any such agent shall be found by said commissioners to have been guilty at any time, while acting as an agent, of defrauding immigrants, or of any other wrongful or disgraceful conduct, they shall exclude such agent, and it shall be the duty of the railroad company to appoint another agent in his place. (Laws 1868, chap. 793, § 1.)

Penalty for violation of above provision.—Any person violating any provision of this act, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than three hundred, and not more than one thousand dollars, or by imprisonment of not less than three months, or

by both said fine and imprisonment. (Laws 1868, chap. 793, § 3.)

Liability for soliciting immigrants as passengers, before landing.—Any runner, or person acting for himself, or for and on behalf of or connected with any steamboat, railroad, or forwarding company, or emigrant boarding-house, who shall solicit or book any passengers emigrating to the United States, and arriving at the port of New York, before such passenger shall have left the vessel in which he has so arrived, or who shall enter or go on board any ship or vessel, so arriving with emigrant passengers, prior to the landing of such passengers therefrom, and also any person, company, or corporation having employed such person for the purpose of soliciting and booking such passengers prior to their leaving the vessel in which they may arrive, shall be severally subject to a penalty of one hundred dollars for each offence, to be sued for and recovered in the same manner, and subject to the same provisions of law as enacted in respect to other penalties imposed by the several acts regulating the powers and duties of the Commissioners of Emigration. Any person violating the provisions of this section may also be indicted for a misdemeanor, which violation shall be held and taken to be a misdemeanor, and he shall, on conviction, be punished by fine not exceeding one hundred dollars, or imprisonment for sixty days. (Laws 1853, chap. 619, § 1.)

Examination and deposition of witness.—Whenever any person or persons may be complained of, and arrested for violating any of the provisions of this act (*a*), or of any act for the benefit or protec-

tion of immigrants or passengers arriving at the port of New York, or about to depart therefrom, it shall be the duty of the magistrate before whom such complaint is made, to take and reduce to writing, in the presence of the person or persons complained of, the evidence of any witness which may be offered, either on behalf of the prosecution, or of the person complained of, allowing the opposing party an opportunity to cross-examine the witness, and the depositions so taken shall be subscribed respectively by the witnesses making the same, and certified by the magistrate; and when so taken and certified, the said depositions shall be filed in the office of the clerk of the court of oyer and terminer, in and for the city and county of New York; and upon the trial of any party accused, in in whose presence any such deposition shall have been taken upon any complaint or charge made against him, relative to the same transaction, such deposition may be read by either party with the same effect as if the same witness were sworn, and his testimony taken in open court upon such trial, provided it shall appear thereby that the witness at the time the deposition was taken, was a resident of this State on his way to some other State, territory, province or country, or a resident of another State, territory or province, or an immigrant from a foreign country; and provided further that it shall not be shown to the court, that the witness at the time of the trial is within its jurisdiction. (Laws 1868, chap. 793, § 2.)

(*a*) Laws 1868, chap. 793. See Section one, of this act (*Ante* p. 190).

Free passes.—Chapter seven hundred and ninety-eight, of the laws of eighteen hundred and sixty-six, entitled "An act prohibiting the issue of Free

Passes on the railroads of this State," is hereby repealed. (Laws 1867, chap. 4, § 1.)

An endorsement on a free ticket, "that the company shall not be liable under any circumstances, whether of negligence of their servants or otherwise, for any injury to the person, or for any loss or injury to the property of the passenger using this ticket," will exempt the company from liability for any injury occasioned by the mere negligence of its servants (Wells *v.* N. Y. Cent. R. Co., 24 N. Y. 181; Perkins *v.* Same, *Id.* 196), and a contract to such effect between the company and the gratuitous passenger, is not void as against law or public policy (*Id*; Bissell *v.* N. Y. Cent. R. Co., 25 N. Y. 442; reversing s. c. 29 Barb. 602), though otherwise, if the passenger even indirectly pays compensation for being carried (Perkins *v.* N. Y. Cent. R. Co., *supra*; Smith *v.* Same, *Id.* 22; affirming s. c. 29 Barb. 132; *contra*, Bissell *v.* Same, *supra*). The price which a drover pays for the transportation of his cattle, and the care he takes of them by the way, is a sufficient consideration for his own passage, and he cannot be considered a gratuitous passenger (Smith *v.* N. Y. Cent. R. Co., *supra*; see also dissenting opinion, Denio, Ch. J., in Bissell *v.* Same, *supra*). Though the company may limit its liability by positive contract, a mere notice on its tickets, or elsewhere, can have no such effect, even where the notice is brought to the knowledge of the passenger (Rawson *v.* Pennsylvania R. Co., 2 Abb. Pr. N. S. 220). A complaint in an action for injury to a passenger carried gratuitously, which alleges that the company received the plaintiff as a passenger, and that while a passenger, he was injured by the negligence of the company; *Held*, to state a cause of action (Nolton *v.* Western R. Corp., 15 N. Y. 444).

Legislature may alter or reduce compensation of road.—The legislature may, when any such railroad shall be opened for use, from time to time, alter or reduce the rate of freight, fare, or other profits upon such road; but the same shall not, without the consent of the corporation, be so reduced as to produce with said profits less than ten per centum per annum on the capital actually expended; nor unless, on an examination of the amounts received and expended, to be made by the state engineer and surveyor, and the comptroller, they shall ascertain that the net income derived by the company from all sources for the year then last past shall have exceeded an annual

income of ten per cent upon the capital of the corporation actually expended. (Laws 1850, chap. 140, § 33.)

Company may restrict its liability for injuries to passengers.—In case any passenger on any railroad shall be injured while on the platform of a car, or on any baggage, wood, or freight car, in violation of the printed regulations of the company posted up at the time in a conspicuous place inside of its passenger cars then in the train, such company shall not be liable for the injury; provided said company at the time furnished room inside its passenger cars sufficient for the proper accommodation of the passengers. (Laws 1850, chap. 140, § 46.)

Where the proper notices are posted up, and there is sufficient accommodation for the passenger in the cars, he has no right to remain on the platform (Higgins *v.* N. Y. & Harlem R. Co., 2 Bosw. 132; Willis *v.* Long Island R. Co., 34 N. Y. 670; affirming s. c. 32 Barb. 398), and the mere fact that the conductor did not object to his standing there, will not be deemed a waiver by the company of the protection given it by the statute (Higgins *v.* N. Y. & H. R. Co., *supra*); though otherwise, where the passenger was compelled by the conductor to stand upon the platform of a crowded car, and was injured in consequence (Sheridan *v.* Brooklyn &c. R. Co., 36 N. Y. 39). Sufficient accommodation, under this section, implies not only space enough within the cars to contain the passengers, but also the means of sitting in the usual manner during the journey (Willis *v.* Long Island R. Co., *supra*). This the company is bound to furnish without request. Thus the passenger is not obliged to go from car to car, in search of such accommodations; nor is he bound to require one occupying an entire seat to make room for him, although the seat is large enough for two persons to occupy when sitting properly; nor to request persons to displace articles which they have placed on a seat, in order to accommodate him (*Id*). It is not negligence, however, on the part of a passenger, to go from car to car, while the train is in motion, in search of a seat (McIntyre *v.* N. Y. Cent. R. Co., 37 N. Y. 287; s. c. 35 How. Pr. 36; affirming s. c. 47 Barb. 515).

But the company can not avail itself of this section, where the passenger was injured while riding on the platform of a car, there being no vacant seat therein (Willis *v.* Long Island R. Co., *supra*), nor where the notice was posted up *outside* the car, and was not shown to have come to

his knowledge (Clark *v.* Eighth Ave. R. Co., 32 Barb. 657); and a notice to the effect, that no passenger should be "permitted to ride in that portion of any baggage car, which is used for storing and distributing baggage," will not exempt the company from liability to a passenger injured by a collision, while riding in that part of the car used as a post-office, with the knowledge and consent of the conductor (Carroll *v.* N. Y. & N. H. R. Co., 1 Duer, 571). Nor is the company exempted from liability for injury to a passenger riding in a common box car, without springs, where no better accommodation is provided by the company, in the same train (Edgerton *v.* N. Y. & H. R. Co., 39 N. Y. 227; affirming s. c. 35 Barb. 389. See also Same *v.* Same, 35 Barb. 193).

Liability of company for death from wrongful act.—Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default, is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages, in respect thereof, then and in every such case, the persons who, or the corporation which, would have been liable, if death had not ensued, shall be liable to an action for damages, nothwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony. (Laws 1847, chap. 450, § 1.)

Nature of act causing death.—It is immaterial whether the death was immediate and instantaneous or consequential (Brown v. Buffalo & State Line R. Co., 22 N. Y. 191).

Who liable.—Corporations are liable for wrongful act causing death (Baker *v.* Bailey, 16 Barb, 54); but a lessor is not liable for such wrongful act of the lessee (Norton *v.* Wiswall, 26 *id.* 618); nor will an action lie by the personal representatives of a brakeman, against a railroad company, to recover damages under the act of 1847 (Sherman *v.* Rochester &c. R. Co., 15 *id.* 574).

Territorial limit.—No action can be maintained under the acts of 1847 and 1849, where the injuries complained of, were inflicted without the state (Whitford *v.* Panama R. Co., 23 N. Y. 465; affirming s. c. 3 Duer, 67; Crowley *v.* Same, 30 Barb. 99; Vandeventer *v.* N. Y. & N. H. R. Co., 27 *id.* 244; Mahler *v.* Norwich Transp. Co., 45 *id.* 226; Beach v. Bay State Co., 30 *id.* 433; reversing s. c. 27 *id.* 248; s. c. 16 How. Pr. 1); and this, whether the company was a foreign corporation (Vandeventer

v. N. Y. & N. H. R. Co., *supra*; Beach *v.* Bay State Co., *supra*; Mahler *v.* Norwich Transp. Co., *supra*), or a resident of this state (Whitford *v.* Panama R. Co., *supra*; Crowley *v.* Same, *supra*).

Action prosecuted, for whose benefit.—Every such action shall be brought by and in the name of the personal representatives of such deceased person, and the amount recovered in every such action shall be for the exclusive benefit of the husband or widow and next of kin of such deceased person, and shall be distributed to such husband or widow and next of kin, in the proportion now provided by law in relation to the distribution of personal property of persons dying intestate. And in every such action the jury may give such damages as they shall deem a fair and just compensation, not exceeding five thousand dollars with reference to the pecuniary injuries resulting from such death to the husband or widow and next of kin of such deceased person. And the amount of damages recovered in any such action shall draw interest from the time of the death of such deceased person, which interest shall be added to the verdict and inserted in the entry of judgment in such action, provided that every such action shall be commenced within two years after the death of such deceased person. But nothing herein contained shall affect any suit or proceeding heretofore commenced and now pending in any of the courts of this state. (Laws 1847, chap. 450, § 2; Am'd Laws 1849, chap. 256, § 1; Am'd Laws 1870, chap. 78, § 1.)

Action, how brought.—Before the amendment of 1870, it was held that since the husband was not next of kin to his wife, he could not recover damages under the statute, resulting from such death (Lucas *v.* N. Y. Cent. R. Co., 21 Barb. 245; Dickens *v.* Same, 23 N. Y. 158; reversing s. c. 28 Barb. 41; Green *v.* Hudson River R. Co., 32 Barb. 25; but see Same *v.* Same, 31 Barb. 260; 28 *id.* 9); but it is not indispensable in order to support the action, that the deceased should leave him sur-

viving, in the words of the statute, "a widow *and* next of kin" (Quin *v.* Moore, 15 N. Y. 432; McMahon *v.* The Mayor &c. of N. Y., 33 *id.* 642; Oldfield *v.* N. Y. & Harlem R. Co., 14 *id.* 310; affirming s. c. 3 E. D. Smith, 103; Tilley *v.* Hudson River R. Co., 24 N. Y. 471).

Interest assignable.—A party's interest in the damages which may be recovered, is assignable (Quin *v.* Moore, 15 N. Y. 432). Such a party is not disqualified to testify, on the ground that he, or she, is the person for whose immediate benefit the suit is prosecuted (*Id*).

Pecuniary loss.—A pecuniary loss, is a loss of money, or of something by which money, or something of money value may be acquired (Beach *v.* Ranney, 2 Hill, 309; Ransom *v.* N. Y. & Erie R. Co., 15 N. Y. 415); but the jury are not limited to the assessment of damages for the actual present loss that may be proved, but may go farther and compensate for the relative injury with reference to the future. They may compensate for the "pecuniary injuries" present and prospective (Oldfield *v.* N. Y. & Harlem R. Co., 14 N. Y. 310; affirming s. c. 3 E. D. Smith, 103). Thus it is not improper to charge the jury, in an action to recover damages resulting from such death of the mother, that they may take into consideration, in assessing the damages, the loss of the nurture, instruction, and physical, moral and intellectual training, which the mother gave to the children (Tilley *v.* Hudson River R. Co., 29 N. Y. 252; Same *v.* Same, 24 *id.* 471; s. c. 23 How. Pr. 363); though otherwise, where such offspring are adults (McIntyre *v.* N. Y. Cent. R. Co., 47 Barb. 515; s. c. affirmed, 37 N. Y. 287). But no pecuniary damage can be predicated of the loss of the society of a wife. It is a case for which money cannot compensate, and cannot be estimated in money (Green *v.* Hudson River R. Co., 32 Barb. 25). So, damages cannot be awarded in respect to the mental sufferings of the party (*Id*). No deduction, however, should be allowed in assessing damages with reference to the death of a husband, on account of the wife having received the insurance effected upon deceased's life, for her benefit (Althof *v.* Wolf, 2 Hilt. 344).

Proof of pecuniary damage.—No proof of pecuniary damage is necessary to sustain the action (Oldfield *v.* N. Y. & Harlem R. Co., 14 N. Y. 310; affirming s. c. 3 E. D. Smith, 103; Keller *v.* N. Y. Cent. R. Co., 24 How. Pr. 172). Thus it is not erroneous for the jury, acting upon their knowledge, and without proof, to find that the services of a boy from eleven to twelve years of age, were valuable to the father, and to estimate their value (O'Mara *v.* Hudson River R. Co., 38 N. Y. 445); but damages (if any), in the case of the wrongful death of a child four years of age, should be nominal (Lehman *v.* City of Brooklyn, 29 Barb. 234). It is the province of the court, however, to give the jury definite instructions as to what may or may not properly be taken into consideration in estimating the pecuniary loss; and if explicit instructions are refused, when asked, or erroneous instructions given, a new trial may be granted (Green *v.* Hudson River R. Co., 32 Barb. 25).

Liability of servant of company, for wrongful act, causing death.—Every agent, engineer, conductor, or other person in the employ of such company or person, through whose wrongful act, neglect, or default the death of a person shall have been caused as aforesaid, shall be liable to be indicted therefor, and upon conviction thereof may be sentenced to a state prison for a term not exceeding five years, or in a county jail not exceeding one year, or to pay a fine not exceeding two hundred and fifty dollars, or both such fine and imprisonment. (Laws 1849, chap. 256, § 2.)

XIV.

OF RAILROADS HELD UNDER LEASE.

Authority to lease.—It shall be lawful hereafter for any railroad corporation to contract with any other railroad corporation for the use of their respective roads, and thereafter to use the same in such manner as may be prescribed in such contract. But nothing in this act contained shall authorize the road of any railroad corporation, to be used by any other railroad corporation, in a manner inconsistent with the provisions of the charter of the corporation whose railroad is to be used under such contract. (Laws 1839, chap. 218, § 1.)

The right to the rent reserved in a lease of a portion of the track of a railroad company, passes with the title to such track &c. (N. Y. Cent. R. Co. *v.* Saratoga & Schenectady R. Co., 39 Barb. 289).

Transfer of stock.—Any railroad corporation created by the laws of this State, or its successors, now being the lessee of the road of any other railroad corporation, may take a surrender or transfer of the capital stock of the stockholders or any of them in the corporation, whose road is held under lease, and issue in exchange therefor the like additional amount of its own capital stock at par or on such other terms and conditions as may be agreed upon between the two corporations; and whenever the greater part of the capital stock of any such corporation shall have been so surrendered or transferred, the directors of the corporation taking such surrender or transfer, shall thereafter, on a resolution electing so to do, to be

entered on their minutes, become *ex-officio* the directors of the corporation whose road is so held under lease, and shall manage and conduct the affairs thereof as provided by law; and whenever the whole of the said capital stock shall have been so surrendered or transferred, and a certificate thereof filed in the office of the Secretary of State, under the common seal of the corporation to whom such surrender or transfer shall have been made, the estate, property, rights, privileges and franchises of the said corporation whose stock shall have been so surrendered or transferred, shall thereupon vest in and be held and enjoyed by the said corporation to whom such surrender or transfer shall have been made, as fully and entirely, and without charge or diminution, as the same were before held and enjoyed, and be managed and controlled by the board of directors of the said corporation to whom such surrender or transfer of the said stock shall have been made, and in the corporate name of such corporation. The rights of any stockholder not so surrendering or transferring his stock, shall not be in any way affected hereby, nor shall existing liabilities or the rights of creditors of the corporation, where stock shall have been so surrendered or transferred, be in any way affected or impaired by this act. (Laws, 1867, chap. 254, § 1.)

See also to the same effect, Laws 1855, chap. 302, § 1. By the second section of this last mentioned act, the Rochester and Genesee Valley Railroad was expressly exempted from the operation of said act.

Lessee of railroad, to maintain fences.— And when the railroad of any railroad corporation shall be leased to any other railroad company, or to any person or persons, such lessees shall maintain fences on the sides of the road so leased, of the height and strength of a division fence, as required by law,

with openings, or gates or bars therein, at the farm-crossings of such railroad, for the use of the proprietors of the lands adjoining such railroads, and shall also construct, where the same has not already been done, and hereafter maintain cattle-guards at all road-crossings, suitable and sufficient to prevent horses, cattle, sheep and hogs from getting on to such railroad. And so long as such fences and cattle-guards shall not be made, and when not in good repair, such lessees and their agents shall be liable for damages, which shall be done by the agents or engineers of any such corporation, to any cattle, horses, sheep, or hogs thereon, and when such fences and guards shall have been duly made, and shall be kept in good repair, such lessee shall not be liable for any such damages, unless negligently or wilfully done. A sufficient post and wire fence of requisite height shall be deemed a lawful fence, within the provisions of this section, but no lessees of a railroad corporation shall be required to fence the sides of said roads except when such fence is necessary to prevent horses, cattle, sheep and hogs from getting on to the track of the railroad, from the lands adjoining the same. (Laws 1864, chap. 582, § 2.)

Lessees to make annual report.—Any railroad corporation which may be the lessee of any other railroad shall, in addition to the powers and duties conferred and imposed by the act, entitled "An act in relation to railroads held under lease," passed April third, one thousand eight hundred and sixty-seven, be required to make to the State Engineer a report of such facts concerning the operation of said leased road or roads as the lessors would otherwise be required to make, and the lessors shall not be required to make such report. (Laws 1869, chap. 844, § 1.)

XV.

OF THE CONSOLIDATION OF RAILROAD COMPANIES.

When two or more companies may be consolidated.—It shall and may be lawful for any railroad company or other corporation organized under the laws of this State, or of this State and any other State, and operating a railroad or bridge, either wholly within, or partly within and partly without this State, to merge and consolidate its capital stock, franchises and property with the capital stock, franchises and property of any other railroad company or companies organized under the laws of this State, or under the laws of this State and any other State, or under the laws of any other State or States, whenever the two or more railroads of the companies or corporations so to be consolidated shall or may form a continuous line of railroad with each other, or by means of any intervening railroad, bridge or ferry. (Laws 1869, chap. 917, § 1.)

This act does not apply to street railroads (Laws 1869, chap. 917, § 7).

What companies shall not consolidate.—No companies or corporations of this State, whose railroads run on parallel or competing lines, shall be authorized by this act to merge or consolidate. (Laws 1869, chap. 917, § 9.)

Proceedings to effect consolidation.—Said consolidation shall be made under the conditions, pro-

visions and restrictions, and with the powers hereinafter in this act mentioned and contained, that is to say:

1. The directors of the companies proposing to consolidate may enter into a joint agreement under the corporate seal of each company for the consolidation of said companies and railroads, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers, and their places of residence, the number of shares of the capital stock, the amount or par value of each share, and the manner of converting the capital stock of each of the said companies into that of the new corporation, and how and when directors and officers shall be chosen, with such other details as they shall deem necessary to perfect such new organization and the consolidation of said companies or railroads.

2. Said agreement shall be submitted to the stockholders of each of the said companies or corporations at a meeting thereof called separately for the purpose of taking the same into consideration; due notice of the time and place of holding said meeting, and the object thereof, shall be given by each company to its stockholders by written or printed notices addressed to each of the persons in whose names the capital stock of such company stands on the books thereof, and delivered to such persons respectively, or sent to them by mail when their post-office address is known to the company, at least thirty days before the time of holding such meeting, and also by a general notice published daily for at least four weeks in some newspaper printed in the city, town or county where such company has its principal office or place of business; and at the said meeting of stockholders the agreement of the said

directors shall be considered, and a vote by ballot taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote, and said ballots shall be cast in person or by proxy, and if two-thirds of all the votes of all the stockholders shall be for the adoption of said agreement then that fact shall be certified thereon by the secretaries of the respective companies under the seal thereof, and the agreement so adopted, or a certified copy thereof, shall be filed in the office of the Secretary of State, and shall from thence be deemed and taken to be the agreement and act of consolidation of the said companies; and a copy of the said agreement and act of consolidation, duly certified by the Secretary of State, under his official seal, shall be evidence in all courts and places of the existence of said new corporation, and that the foregoing provisions of this act have been fully observed and complied with. (Laws 1869, chap. 917, § 2.)

Consolidation perfected, when.—Upon the making and perfecting such agreement and act of consolidation as hereinbefore provided, and filing the same or a copy thereof in the office of the Secretary of State as aforesaid, the said corporations parties thereto shall be deemed and taken to be one corporation by the name provided in said agreement and act, but such act of consolidation shall not release such new corporation from any of the restrictions, disabilities or duties of the several corporations so consolidated. But nothing in this act contained shall allow any rate of fare for way passengers greater than two cents per mile, to be charged or taken over the track or tracks of that railroad, now known as the New York Central Railroad Company, and the rate of fare for way passengers over the track or tracks now operated by the said New York

Central Railroad Company, shall continue to be two cents per mile and no more, wherever it is now restricted to that rate of fare. But nothing herein contained shall apply to street railroads. (Laws 1869, chap. 917, § 3.)

Effect of consolidation.—Upon the consummation of said act of consolidation as aforesaid, all and singular the rights, privileges, exemptions and franchises of each of said corporations, parties to the same, and all the property, real, personal and mixed, and all debts due on whatever account to either of said corporations, as well as all stock subscriptions and other things in action belonging to either of said corporations, shall be taken and deemed to be transferred to and vested in such new corporation, without further act or deed; and all claims, demands, property, rights of way, and every other interest, shall be as effectually the property of the new corporation as they were of the former corporations parties to the said agreement and act; and the title to all real estate, taken by deed or otherwise, under the laws of this State, vested in either of such corporations parties to said agreement and act, shall not be deemed to revert or be in any way impaired by reason of this act, or anything done by virtue thereof, but shall be vested in the new corporation by virtue of such act of consolidation. (Laws 1869, chap. 917, § 4.)

Same.—The rights of all creditors of and all liens upon the property of either of said corporations, parties to said agreement and act, shall be preserved unimpaired, and the respective corporations shall be deemed to continue in existence to preserve the same, and all debts and liabilities incurred by either of said corporations, except mortgages, shall thenceforth attach

to such new corporation, and be enforced against it and its property to the same extent as if said debts or liabilities had been incurred or contracted by it. No suit, action or other proceeding now pending before any court or tribunal, in which either of said railroad companies is a party, shall be deemed to have abated or been discontinued by the agreement and act of consolidation as aforesaid, but the same may be conducted in the name of the existing corporations to final judgment, or such new corporation may be, by order of the court, on motion, substituted as a party. Suits may be brought and maintained against such new corporation in the courts of this State, for all causes of action, in the same manner as against other railroad corporations therein. (Laws 1869, chap. 917, § 5.)

Consolidated company, how taxed.—The real estate of such new corporation, situate within this State, shall be assessed and taxed in the several towns and cities where the same shall be situated in like manner as the real estate of other railroad corporations is, or may be taxed and assessed, and such proportion of the capital stock and personal property of such new corporation shall in like manner be assessed and taxed in this State, as the number of miles of its railroad situate in this State bears to the number of miles of its railroad situate in the other State or States. (Laws 1869, chap. 917, § 6.)

Fare allowed consolidated company.—Nothing in this act contained shall be so construed as to allow such consolidated company to charge a higher rate of fare per passenger per mile upon any part or portion of such consolidated line than is now allowed by law to be charged by each existing com-

pany respectively, nor shall this act apply to street railroads; and nothing in this act contained shall be so construed as to affect or impair in any way the validity of any contract now existing between the Buffalo and State line Railroad Company and the New York and Erie Railroad Company. (Laws 1869, chap. 917, § 7.)

Application of general railroad act, to consolidated companies.—All the provisions of the act entitled "An act to authorize the formation of railroad corporations, and to regulate the same," passed April second, eighteen hundred and fifty, and of the several acts amendatory thereof or in addition thereto, shall be applicable to the new corporation so to be formed as aforesaid, so far as the same are now applicable to the railroad companies of this State, which may be consolidated with any other company or companies by virtue of this act. (Laws 1867, chap. 917, § 8.)

XVI.

OF RAILROAD BONDS; AND HEREIN OF THE MORTGAGE.

Company may issue bonds, for loan.—Every corporation formed under this act shall, in addition to the powers conferred on corporations, in the third title of the eighteenth chapter of the first part of the Revised Statutes, have power.

From time to time to borrow such sums of money as may be necessary for completing and finishing or operating their railroad, and to issue and dispose of their bonds for any amount so borrowed, and to mortgage their corporate property and franchises to secure the payment of any debt contracted by the company for the purposes aforesaid (*a*); and the directors of the company may confer on any holder of any bond issued for money borrowed as aforesaid, the right to convert the principal due or owing thereon into stock of said company (*b*), at any time not exceeding ten years from the date of the bond, under such regulations as the directors may see fit to adopt. (Laws 1850, chap. 140, § 28, subd. 10.)

(*a*) **What may be mortgaged.** Where, to secure its bonds, a railroad company executed a mortgage on its road constructed or to be constructed, its real estate &c., then, or which should thereafter be owned by it; *Held*, on foreclosure, that the mortgage covered and was a valid lien on all the property of the railroad company, set forth in the mortgage and lawfully acquired for the purposes of its incorporation, whether such property was owned by the company at the time of recording the mortgage, or was subsequently acquired (Seymour *v.* Canandaigua &c. R. Co., 25 Barb. 284; s. c. 14 How. Pr. 531); nor is it material whether the road

had or had not been entirely located at such time; nor whether the location thereof, if previously made, was afterwards changed (*Id*). Nor is the mortgage objectionable on the ground of indefiniteness. It must be deemed to refer to the strip authorized to be acquired by subdivision four, of section twenty-eight, of the general act, as designated and located by sections fourteen and twenty-two of the same act (*Id*). So where the mortgage was executed by the company upon its lands, tracks &c., "together with all the locomotives, tenders, cars, carriages, tools and machinery owned or thereafter to be owned by the company, or in any way belonging or appertaining to said road, and to be used thereon," it was *held* valid, even as to property subsequently acquired (Benjamin *v.* Elmira &c. R. Co., 49 Barb. 441). The mortgage may include in its terms the rolling stock (Hoyle *v.* Plattsburgh &c. R. Co., 51 Barb. 45; affirming s. c. *sub nom.* Bement *v.* Same, 47 *id.* 104). But a mortgage of all personal property, "in any way belonging or appertaining to the railroad of said company;" *Held* not to include canal-boats, though the same were considered as belonging to the company and accessory to the business of the road, forming a connection at the point where the road terminates (Parish *v.* Wheeler, 22 N. Y. 494). The mortgage, the mortgage bond, and a certificate endorsed on the latter, to the effect that such bond is included in the mortgage, are all to be considered together, since they are parts and parcels of the same security (Benjamin *v.* Elmira &c. R. Co., *supra.*)

(*b*) **Bonds convertible into stock.** The directors are authorized to issue stock in the conversion of the bonds of the company, and this is so, even though such issue increases the amount of the capital stock beyond that fixed by the charter (Belmont *v.* Erie R. Co., 52 Barb. 637).

Railroad bonds when payable to order only.—It shall be lawful for any person or persons owning and holding any railroad mortgage bonds, or other corporate bonds (for which a registry is not by law provided), heretofore issued, or which may be hereafter issued, and made payable in this state, and which are made payable to bearer, to render the same non-negotiable by the owner and holder indorsing upon the same and subscribing a statement that said bond is the property of such owner. And thereupon the principal sum of money mentioned in said bond shall only be payable to such owner or his legal representatives or assigns. (Laws 1871, chap. 84, § 1.)

Railroad bonds, how transferable.—The bonds described and referred to in the first section of this act may be transferred by an indorsement in blank, giving name and residence of assignor, or they may be transferred by an indorsement payable to bearer or to the order of the purchaser (naming him), subscribed by the assignor, giving name and place of residence. (Laws 1871, chap. 84, § 2.)

Where the payee named in the bond, assigned the same in blank, the title passes by delivery merely (Brainerd *v.* N. Y. & Harlem R. Co., 10 Bosw. 332).

Mortgage of real and personal property to be recorded.—It shall not be necessary to file as a chattel mortgage, any mortgage which has been, or shall hereafter be, executed by any railroad company upon real and personal property, and which has been, or shall be, recorded as a mortgage of real estate in each county in or through which the railroad runs. (Laws 1868, chap. 779, § 1.)

See Hoyle *v.* Plattsburgh &c. R. Co., 51 Barb. 45; affirming s. c. *sub nom.* Bement *v.* Same, 47 *Id.* 104.

Stockholder may redeem mortgage on foreclosure.—Whenever default shall be made by any railroad or plankroad company, in the payment of principal or interest of any bonds of such company, which are secured by a mortgage of the property of such company, it shall be lawful for each and every stockholder of said company, at any time during the process of such foreclosure, to pay to the mortgagees named in such mortgage, for the use of and benefit of the holder and holders of such bonds, such a proportion of the sum due and of such sum secured to be paid by the whole of the bonds secured by such mortgage,

as such stockholder's stock shall bear to the whole stock of said company: and on so paying such stockholder shall, to the extent of such payment, become and be interested in said mortgage and protected thereby. (Laws 1853, chap. 502, § 1.)

Same.—In case of the foreclosure of any mortgage given by any railroad or plankroad company, to secure the payment of any bond of such company, any stockholder of such company shall, for the period of six months after the sale under such foreclosure, have the right on paying to the purchaser or purchasers at or under such sale, or to the mortgagees named in such mortgage, for the use and benefit of said purchaser or purchasers, a sum equal to such proportion of the price paid on such sale, and the costs and expenses thereof, as such stockholder's stock in said company shall bear to the whole capital stock of said company: and on so paying, such stockholder shall be entitled to have the same relative amount of stock or interest in said railroad or plankroad company and its road, franchises and other property. (Laws 1853, chap. 502, § 2.)

Mortgagee may purchase railroad, on foreclosure.—It shall be lawful for any mortgagee of any railroad and the franchises thereof, to become the purchaser of the same, at any sale thereof under the mortgage, upon foreclosure by advertisement, or under a judgment, or decree, or otherwise, and to hold and convey the same, with all the rights and privileges belonging thereto or connected therewith. (Laws 1857, chap. 444, § 1.)

Requisites of the complaint in an action by a trustee of the first mortgage bonds, respecting the fund arising from a railroad mortgage (Coe *v.* Beckwith, 10 Abb. Pr. 296).

Rights acquired by purchase of franchise. —*And whenever the purchaser or purchasers of the real estate, track and fixtures of any railroad corporation which has heretofore been sold, or may be hereafter sold, by virtue of any mortgage executed by such corporation, or execution issued upon any judgment or decree of any court, shall acquire title to the same in the manner prescribed by law, such purchaser or purchasers may associate with him and them any number of persons, and make and acknowledge and file articles of association, as prescribed by this act; such purchaser or purchasers and their associates shall thereupon be a corporation, with all the powers, privileges and franchises, and be subject to all the provisions of said act. (Laws 1850, chap. 140, § 5; Am'd Laws 1854, chap. 282, § 1.)

As to whether such a provision creates a new corporation, or continues the old one under the same or a new name, consult Mosier *v.* Hilton, 15 Barb. 657. A stockholder of the Company may purchase its property at a sheriff's sale, even below its value, for his own benefit, and where no fraud is shown, is not accountable to the other stockholders therefor (Mickles *v.* Rochester City Bank, 11 Paige, 118; affirmed, *Id.* 129 note).

The rolling stock of a road is personal property and is leviable as such on execution (Beardsley *v.* Ontario Bank, 31 B. 619; Stevens *v.* Buffalo & N. Y. R. Co., *Id.* 590), and is not considered *fixtures*, even as between a mortgagee and an execution creditor (*Id*).

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* The portion of the section here omitted, relates entirely to the election of directors to manage the affairs of the Company organized under the general act. *Vide ante*, p. 48.

XVII.

OF MUNICIPAL AID IN THE CONSTRUCTION OF RAILROADS, AND HEREIN OF THE COMMISSIONERS.

The Petition.—Whenever a majority of the tax payers of any municipal corporation in this State, who are taxed or assessed for property, not including those taxed for dogs or highway tax only, upon the last preceding assessment roll or tax list of said corporation, and who are assessed or taxed, or represent a majority of the taxable property, upon said last assessment roll or tax-list, shall make application to the county judge of the county in which such municipal corporation is situate, by petition, verified by one of the petitioners, setting forth that they are such majority of tax payers, and are taxed or assessed for or represent such a majority of taxable property, and that they desire that such municipal corporation shall create and issue its bonds to an amount named in such petition, and invest the same, or the proceeds thereof, in the stock or bonds (as said petition may direct) of such railroad company in this State as may be named in said petition, it shall be the duty of said county judge to order that a notice shall be forthwith published in some newspaper in such county, or, if there be no newspaper published in said county, then in some newspaper printed in an adjoining county, directed to whom it may concern, setting forth that on a day therein named, which shall not be less than ten days nor more than thirty days from the date of such publication, he will proceed to

take proof of the facts set forth in said petition as to the number of tax payers joining in such petition, and as to the amount of taxable property represented by them. Any solvent corporation or company assessed or taxed on said last assessment roll or tax list may join in such petition, and shall have all the rights and privileges under this act as other taxpayers. Any person, partnership or corporation upon whom it shall have been intended to levy a tax by virtue of said last assessment list and tax roll, under whatever name, and who shall have paid or are liable to pay such tax thus intended to be assessed and levied, shall be a tax payer, entitled to represent the property thus taxed, and as such entitled to all the rights and privileges of this act. The petition authorized by this section may be absolute or conditional; and if the same be conditional, the acceptance of a subscription founded on such petition, shall bind the railroad company accepting the same to the observance of the condition or conditions specified in such petition; provided, however, that non-compliance with any condition inserted in such petition, shall not in any manner invalidate the bonds created and issued in pursuance of such petition. No municipal corporation shall issue its bonds under the provisions of this act for a greater amount than twenty per centum of the taxable property thereof as appears on its said last assessment list or tax roll. The words "municipal corporation," when used in this act shall be construed to mean any city, town or incorporated village in this State, and the word "tax payer," shall mean any corporation or person assessed or taxed for property, either individually, or as agent, trustee, guardian, executor or administrator, or who shall have been intended to have been thus taxed, and shall have paid or are liable to pay the tax as hereinbefore provided, or

the owner of any non-resident lands, taxed as such, not including those taxed for dogs or highway tax only, and the words "tax list or assessment roll," when used in this act shall mean the tax list or assessment roll of said municipal corporation last completed before the first presentation of such petition to the judge. But nothing herein contained shall be construed so as to include the city of New York, or the counties of New York, Kings, Erie, Westchester, Onondaga, and the town of Royalton in the county of Niagara, within the provisions of this act. (Laws 1869, chap. 907, § 1; Am'd Laws, 1870, chap. 173, § 1; Am'd Laws 1871, chap. 925, § 1.)

The legislature has power to enact laws enabling towns to subscribe for stock or bonds of a railroad company and issue their bonds, or raise money by taxation to pay for the same (Bank of Rome *v.* Village of Rome, 18 N. Y. 38; Starin *v.* Town of Genoa, 23 N. Y. 439; Gould *v.* Town of Sterling, *Id;* People, *ex rel.* Albany and Susquehanna R. Co. *v.* Mitchell, 35 N. Y. 551; affirming s. c. 45 Barb. 208; Matter of Tax Payers of Kingston, 40 How Pr. 444). There is nothing in such an act repugnant to those constitutional provisions (Const., Art. I, § 6) designed to protect the citizen from being deprived of his property without due process of law, and restraining the taking of private property for public use, unless just compensation is made therefor. The owner is not deprived of his property, nor is it taken from him for public use within the meaning of the constitution; nor is his property affected, except contingently and remotely, as in the case of taxation (Grant *v.* Courter, 24 Barb. 232); nor is the public moneys or property appropriated for local or private purposes; nor the credit of the State pledged in aid of any individual association or corporation (Matter of Tax Payers of Kingston, *supra*). But no legislative enactments authorizing towns in their corporate capacities, to issue their bonds; borrow money thereon, and *donate* the proceeds to the railroad company, is valid (Sweet *v.* Hulbert, 51 Barb. 312). Where in a charter, conferring upon the municipality, authority to aid a railroad company by subscribing to the stock of such railroad corporation, and raising the necessary funds therefor, but such authority was not to be exercised, until the question whether or not it was expedient for the city to create such liability, should be submitted to the people of the city, and a vote taken thereon for or against such subscription, it was *held* that such provision was not unconstitutional, nor a delegation of legislative power, but a legitimate case of conditional legislation (Bank of

Rome *v.* Village of Rome, *supra;* Clarke *v.* City of Rochester, 24 Barb. 446; s. c. 14 How. Pr. 193; s. c. 5 Abb. Pr. 107; reversing s. c. 13 How. Pr. 204). In the former case, in delivering the opinion of the Court of Appeals, Johnson, Ch J., said:—"the legislature did not compel the village to subscribe, but, creating by law the necessary machinery, left it to the tax payers to determine the matter." A municipal corporation cannot issue its bonds and invest the proceeds in railroad stock, unless such power has been conferred by the legislature and accepted by such municipal corporation (Town of Duanesburgh *v.* Jenkins, 46 Barb. 294, and cases cited).

An order granting municipal aid to a railroad corporation, upon the condition that the avails be used exclusively in the construction of its railroad, within the county in which the municipal corporation granting such aid was located, is void where the railroad company had no authority to construct its road or any part thereof, in the said county (People *ex rel.* Averill *v.* Adirondack Company, 57 Barb. 656); and the action of the county judge in granting such order, is reviewable by *certiorari* (*Id*).

The provisions of chapter 907 of the laws of 1869 were subsequently extended and made applicable to the counties of Albany and Greene (Laws 1871, chap. 146, § 1); to the county of Niagara, excepting the town of Royalton, in that county (Laws 1871, chap. 388, § 1), and to the towns of Concord, Boston, Hamburgh, East Hamburgh, Colden and Sardinia, in the county of Erie (Laws 1871, chap. 64, § 1). The act was also amended by striking out the words Seneca, Yates and Ontario, wherever they occurred in the same (Laws 1870, chap. 173, § 1). The amendment of 1871 (chap. 925, § 1), substantially embraced in its provisions, these several extensions and amendments.

Hearing.—It shall be the duty of the said judge at the time and place named in the said notice to proceed and take proof as to the said allegations in said petition, and if it shall appear satisfactorily to him that the said petitioners, or the said petitioners and such other tax payers of said municipal corporation as may then and there appear before him and express a desire to join as petitioners in said petition, do represent a majority of the tax payers of said municipal corporation, as shown by the last preceding tax list or assessment roll, and do represent a majority of the taxable property upon said list or roll, he shall so adjudge and determine, and cause the same to be entered of record in the office

of the clerk of the county in which said municipal corporation is situated, and such judgment and the record thereof, shall have the same force and effect as other judgments and records in courts of record in this State; and in case any county judge, to whom any such petitions may have been presented, shall be declared incompetent, or ineligible, or in any manner disqualified to hear the same, by any court on certiorari from any determination of such county judge, in any proceeding under this act had before him, the original petitions, filed with the county clerk in such proceeding and on such determination, may be taken from file and presented to a judge of an adjoining county or a justice of the Supreme Court; and in all such cases the same proceedings may be had before such county judge or justice of the Supreme Court as are required by the provisions of this act. The judge shall file the petition as part of the judgment roll, and on making his final determination in any case, he shall forthwith publish notice thereof for three weeks, at least once in each week, in the same newspaper in which notice of such hearing was published as ordered. (Laws 1869, chap. 907, § 2; Am'd Laws 1871, chap. 925, § 2.)

Evidence of consent.—Whenever any municipal corporation in this State that has heretofore issued its bonds in aid of any railroad, upon the written consent of taxpayers, or whenever any holder of such bonds so heretofore issued shall desire to perpetuate the proof of such consent in the manner hereinbefore provided for the perpetuation of the proof of such consent, as to bonds which may be issued under the provisions of this act, application for that purpose may be made to the county judge of the county in which such municipal corporation is situated; and it shall be law-

ful for such judge, after notice to whom it may concern in manner as herein before provided, to proceed to take proof concerning the allegations in such petition; and if it shall be proved to his satisfaction that all the consents necessary to be obtained before such bonds could be lawfully issued were obtained, he shall find the facts and so adjudge and determine; and such judgment and the record thereof, shall have the same force and effect as other judgments and records in other courts of record in this State. (Laws 1869, chap. 907, § 9.)

Defects in the consent of the taxpayers may be cured by a subsequent legislative enactment (People *ex rel.* Albany & Susquehanna R. Co. *v.* Mitchell, 35 N. Y. 551; affirming s. c. 45 Barb. 208).

Several local acts relative to municipal aid to certain companies had been passed previous to the general act of 1869. The provisions of section one, chapter six hundred and ninety-five, laws 1866, must be construed as applying to them. The provisions of this act read as follows: "The original written consent, duly acknowledged or proved, of the taxpayers to the loaning of money on the faith and credit of any town or city, for the issuing of bonds of such town or city, to aid in the construction of any railroad in this State, shall be recorded and filed in the office of the clerk of the county in which such towns or cities may be situated, and a copy thereof, duly certified by the said county clerk, shall be filed in the office of the clerk of the town or city wherein the respective property affected thereby is situated, any law requiring a different filing to the contrary notwithstanding."

Appointment of commissioners.—If the said judge shall adjudge and determine that such petitioners do represent a majority of such taxpayers as aforesaid, and a majority of such taxable property, as aforesaid, it shall be his duty forthwith to appoint and commission three persons who shall be freeholders, residents and taxpayers within the corporate limits of such corporation, to be commissioners for the purposes hereinafter named. The said commissioners shall hold their offices for five years, and until others are appointed

by the county judge of said county, and shall, before entering upon the duties of their office, each make oath faithfully to discharge all the duties thereof. All vacancies in such commission shall also be filled by such county judge as they occur. Said commissioners shall each receive the sum of three dollars per day for each day actually engaged in the discharge of their duties, and their necessary disbursements, to be audited and paid by the usual disbursing officer of such municipal corporation. A majority of such commissioners, at a meeting of which all have notice, shall constitute a quorum, and may exercise the powers of the commission. (Laws 1869, chap. 907, § 3.)

Powers of commissioners.—It shall be competent for any corporation, in aid to the construction of whose railroad bonds shall have been authorized to be issued by any municipal corporation in this State, to enter into any agreement with the commissioners appointed to issue said bonds, limiting and defining the times when and the proportions in which said bonds or their proceeds shall be delivered to said corporation, and the place or places where and the purposes for which such bonds or their proceeds shall be applied or used, and any such agreement in writing, duly executed by such corporation and a majority of such commissioners, shall, in all courts and places, be valid and effectual. And such commissioners shall not be compelled by any court to deliver such bonds or their proceeds to such corporation, until such agreement shall be executed if required by them. But in case such commissioners and such railroad corporation cannot agree, or in case the said commissioners refuse to make any agreement, then in either case the Supreme Court at general term may, on motion and after hear-

ing all parties interested, determine upon what terms and conditions said bonds should be delivered to said railroad corporations, having due regard to the public good, the rights of said municipal corporation whose bonds are authorized to be issued, and the rights of said railroad corporation, and shall have power to compel the delivery of said bonds on such terms and conditions, and in such manner as it shall thus determine upon, by the usual process of the court. Said court shall also, by the usual process of said court in like cases, have power at any time to prevent by injunction the issue of said bonds, or any portion thereof, on notice and for good cause shown. And any justice of said court may grant a temporary injunction until such motion can be heard. (Laws 1870, chap. 507, § 1; Am'd Laws 1871, chap. 925, § 5.)

Same.—Such commissioners are further empowered and directed to subscribe in the name of the municipal corporation which they represent to the stock or bonds of the railroad company named in such petition (as the petition may direct), to an amount equal to the amount of bonds so created by them, and to pay for the same by exchanging the said bonds therefor at par; or they may, at their discretion, sell and dispose of the said municipal corporation bonds so created by them at rates not less than par, and invest the proceeds thereof in such stock or bonds of such railroad company as may be directed in said petition. They shall represent, either in person or by proxy, such municipal corporation at all meetings of such railroad bondholders or stockholders (*a*). Such stock or bonds so purchased by said commissioners may be sold by them before the maturing of the bonds of such municipal corporation only upon the order of the county judge of the county,

made upon the petition of a majority of the tax payers of said municipal corporation representing a majority of the taxable property thereof, as shown by the last preceding tax list or assessment roll; and the proceeds from such sale shall be forthwith paid by them to the treasurer (or other proper officer) of such municipal corporation, to be by him invested in a sinking fund, as hereinafter provided. Such commissioners may vote for directors on the stock of such town, village or city. (Laws 1869, chap. 907, § 5.)

(*a*) The town by taking stock, becomes a stockholder and sustains the same relation to the company as an individual stockholder. The issue of bonds, is only the machinery employed to pay for the stock (Matter of Tax-payers of Kingston, 40 How. Pr. 444).

The commissioners are to cause to be made and executed with all reasonable dispatch, the bonds of the municipal corporation (Laws 1869, chap. 907, § 4; Am'd Laws 1870, chap. 789, § 1; Am'd Laws 1871, chap. 283, § 1; Am'd Laws 1871, chap. 925, § 6), and may issue the same payable at any time they may elect, less than thirty years (*Id*). They are also to provide within three years from the time of issuing said bonds, for the annual payment of at least one per cent of the same to constitute a sinking fund, so as to secure the final liquidation of the bonds within twenty-five years after their date (Laws 1869, chap. 907, § 6). In case the payment of the principal or interest of such bonds issued by any village, are not paid, the commissioners have certain additional duties to perform (Laws 1870, chap. 300, § 1); for a violation of which, they are subject to a penalty not exceeding $1,000, nor less than $250 (*Id.* § 2).

Same.—The commissioners appointed under and by virtue of the several acts to facilitate the construction of railroads in this State, and who have been duly authorized under said laws to issue bonds of any town, city or village therein, are hereby required to present before the boards of auditors of their respective towns, cities or villages, whose duty it is annually to examine and audit the receipts and disbursements of either town, city or village officers, at each annual meeting of said boards of town auditors, or the audit-

ing board in any city or village, all such bonds and coupons thereof which have been paid by them respectively during the year then ending; also to render a written statement or report annually to said board, showing in items all their receipts and expenditures, with vouchers. It shall be the further duty of said commissioners to loan on proper security or collaterals or deposit in some solvent bank or banking institution, at the best rate of interest they may be able to obtain (not exceeding seven per cent), all moneys that shall come into their hands by virtue of their office, and not needed for current liabilities, and all interest or earnings accruing from such loans or deposits shall be credited to their respective towns, cities or villages, and accounted for in their annual settlements with the said boards of auditors. (Laws 1871, chap. 537, § 1.)

Moneys received by railroad, how applied.—The moneys received by any railroad company from any such commissioners, or from the sale of any bonds of any municipal corporation which they may receive under the provisions of this act, shall be by the said company faithfully applied to the construction and equipment of such railroad, and to no other purpose; and any other use thereof by any officer or agent of such company shall be deemed to be a misdemeanor, and shall be punished on conviction by imprisonment in the county jail for a term not exceeding five years. (Laws 1869, chap. 907, § 7.)

The bonds.—It shall be the duty of such commissioners, with all reasonable dispatch, to cause to be made and executed the bonds of such municipal corporation, attested by the seal of such corporation affixed thereto, if such corporation has a common seal,

and, if not, then by their individual seals, and signed and certified by said commissioners, who are hereby authorized and empowered to fix such common seal thereto, and to sign and certify such bonds. Such bonds shall become due and payable at the expiration of thirty years from their date, and shall bear interest at the rate of seven per cent per annum, payable semi-annually, and shall not exceed in amount twenty per cent of the entire taxable property within the bounds of said municipal corporation, as shown by said tax list, nor shall they exceed in amount the amount set forth in such petition. The said bonds shall also bear interest warrants, corresponding in number and amounts with the several payments of interest to become due thereon, but the commissioners may agree with any holders to register any such bonds, in which case the interest warrants on the registered bonds shall be surrendered, and the interest shall be payable only on the production of the registered bonds, which shall then be transferable only on the commissioners' records. The savings banks of this State are authorized to invest in said bonds not to exceed ten per cent of their deposits. All taxes except school and road taxes, collected for the next thirty years, or so much thereof as may be necessary, in any town, village or city, on the assessed valuation of any railroad in said town, village, or city, for which said town, village or city has issued or shall issue bonds to aid in the construction of said railroad, shall be paid over to the treasurer of the county in which said town, city or village lies. It shall be the duty of said treasurer, with the money arising from taxes levied and collected as aforesaid, which has heretofore been, or shall hereafter be paid to him (including the interest thereon), to purchase the bonds of said town, issued by said town, to aid in

the construction of any railroad or railroads, when the same can be purchased at or below par; the bonds so purchased to be immediately canceled by said treasurer and the county judge, and deposited with the board of supervisors. In case said bonds so issued cannot be purchased at or below the par value thereof, then it shall be the duty of said treasurer, and he is hereby directed, to invest said money so paid to him as above mentioned, with the accumulated interest thereon, in the bonds of this State, or of any city, county, town or village thereof, issued pursuant to the laws of this State, or in bonds of the United States. The bonds so purchased, with the accumulated interest thereon, shall be held by said county treasurer as a sinking fund for the redemption and payment of the bonds issued or to be issued by said town, village or city, in aid of the construction of said railroad or railroads. In case any county treasurer unreasonably refuse or neglect to comply with the provisions of this act, any tax payer in any town, village or city theretofore having issued bonds in aid of the construction of any railroad or railroads, is hereby authorized to apply to the county judge, on petition, for an order compelling said treasurer to execute the provisions of this act. And it shall be the duty of said county judge, upon a proper case being made, to issue an order directing said county treasurer to execute the provisions of this act. All provisions of law now in force, relating to the enforcement of the decrees or orders of the Supreme Court, are hereby declared to apply to and devolve upon said county judge in the enforcement of said order. The county treasurers of the several counties of this State, in which one or more towns are situated, which have issued bonds for railroad purposes, shall execute a bond, with two sufficient sureties to be

approved by the county judge of the counties respectively, to the People of the State of New York, in such penal sum as may be prescribed by the board of supervisors of the respective counties, conditioned for the faithful performance of the duties devolving upon him, in pursuance of the provisions of this act. In case of a vacancy in the office of commissioners, or in case all commissioners are notified of any meeting, a majority of the commissioners shall have and exercise all the powers and duties of the three commissioners. The said commissioners may issue the said bonds, payable at any time they may elect, less than thirty years, any law heretofore passed to the contrary, but they shall not so issue said bonds that more than ten per cent of the principal of the whole amount of bonds issued shall become due or payable in any one year. (Laws 1869, chap. 907, § 4; Am'd Laws 1870, chap. 789, § 1; Am'd Laws 1871, chap. 283, § 1; Am'd Laws 1871, chap. 925, § 6.)

Bonds to be registered.—The bonds of any municipal corporation which may be issued under the provisions of this act shall be registered in the office of the county clerk of the county in which such corporation is situated, and shall have the words "registered in the county clerk's office" written or printed upon them, attested by the official seal of said clerk; and said clerk shall receive for each attestation the sum of twenty cents. (Laws 1869, chap. 907, § 8.)

When non-negotiable.—It shall be lawful for the owners or holders of any bond issued by any village, town, city or county in this State, pursuant to law, and made payable to the bearer thereof, to render such bonds non-negotiable, except by the owner's in-

dorsement, by indorsing upon the same, and subscribing a statement, that said bond is the property of such owner, and thereupon the principal sum of money mention in said bond shall only be payable to said owner, or his legal representatives or assigns. (Laws 1870, chap. 438, § 1.)

Payment of the Bonds.—The bonds of any municipal corporation, issued pursuant to the provisions of this act, shall be a charge upon the real and personal estate within the limits thereof, and the principal and interest thereof when due (or so much thereof as shall fail to be met by the interest on such railroad bonds, or the dividends on such railroad stock, or the sinking found herein provided for), shall be collected and paid in like manner as other debts, obligations and charges against the said municipal corporation. The said commissioners shall also provide, within three years from the time of issuing said bonds, for the annual payment of at least one per cent of the same, to constitute a sinking fund, so as to secure the final liquidation of said bonds within twenty-five years after their date, and for that purpose they shall receive and apply annually the surplus dividends on the stock held by said towns over the amount necessary to pay the annual interest on said bonds, and if the amount of such surplus dividends is not sufficient for the annual payment of said one per cent, and the said commissioners shall not have received sufficient from the sale of the stock belonging to the town to pay the same, and from other sources as herein provided, then the deficiency shall be reported by said commissioners to the board of supervisors, to be levied and raised annually in the manner herein provided for paying the interest on said bonds. The

treasurer (or other proper officer of such municipal corporation) shall have the custody of any railroad bonds or certificates of stock that may be subscribed for as aforesaid, and shall collect the interest upon any such bonds, or the dividends upon such stock, as it becomes due or is made payable, and shall apply the same towards the payment of the interest from time becoming due upon the said bonds of said municipal corporation; any surplus of interest or dividends, after providing for the interest upon the bonds of said municipal corporation, shall go to make up a sinking fund for the redemption of the principal of said corporation bonds. In case the stock or bonds purchased as aforesaid are sold by said commissioners, such treasurer or other officer shall also invest the proceeds thereof in a like sinking fund; and in case the same are not sold when the said bonds hereby authorized to be created and issued by said commissioners shall mature, and the principal thereof become payable, the commissioners shall sell the same, or so much thereof as shall be necessary, to pay the outstanding principal sum due on such bonds in full, and shall pay the proceeds thereof to such treasurer or other proper officer, to be by him applied to the redemption and payment of such bonds. (Laws 1869, chap. 907, § 6.)

Same.—In all cases where bonds of any town, village or other municipal corporation may have been or shall hereafter be issued according to law, and in all cases where the payment of the principal or interest of such bonds shall not have been otherwise paid or provided for, the same shall be a charge upon the real and personal property of such town, village or municipal corporation, and shall be assessed, levied, collected, and paid in like manner as other debts,

obligations and charges against such town, village or municipal corporation, except that in villages the same shall be assessed, levied and collected by the trustees thereof in the following manner: The commissioners of said village, if any there be, who are or have been duly authorized by law to issue said bonds, or if there shall be no commissioners, then the said trustees, or a majority of them, shall, on or before the first day of January of each year, prepare and file with the clerk of the said village corporation a detailed statement of the amount of bonds which may have been issued by said village, or which may be a charge upon the same, with the amount of principal and interest which may have become due, or which shall become due during the succeeding year, and such amount of principal and interest which shall be already due, or which shall become due during such succeeding year, shall be by the trustees of said village assessed and levied upon the taxable property of said village, and collected with the other taxes which shall be collected from time to time for village purposes; and whenever, through inadvertence, neglect, or other cause, any portion of the principal or interest due as aforesaid upon such bonds by such municipal corporation shall not have been paid, the same shall be assessed and collected at the first assessment and collection of taxes by such municipal corporation after such failure or omission to pay the same. (Laws 1870, chap. 300, § 1.)

Same.—Any commissioner, officer or officers whose duty it shall be to make reports as provided for in the first section of this act, or to make provision for the payment of the principal or interest of such bonds as aforesaid, and who shall fail or refuse to make such report, or to provide for such payment,

shall be liable to a penalty not exceeding one thousand dollars, nor less than two hundred and fifty dollars, to be sued for and recovered by the holder of any of the aforesaid bonds or obligations. (Laws 1870, chap. 300, § 2.)

Disposition of redeemed Bonds.—The commissioners appointed under and by virtue of the several acts to facilitate the construction of railroads in this State, and who have been duly authorized under said laws to issue bonds of any town, city or village therein, are hereby required to present before the boards of auditors of their respective towns, cities or villages, whose duty it is annually to examine and audit the receipts and disbursements of either town, city or village officers, at each annual meeting of said boards of town auditors, or the auditing board in any city or village, all such bonds and coupons thereof which have been paid by them respectively, during the year then ending. (Laws 1871, chap. 537, § 1.)

Same.—It shall be the duty of the several boards of town auditors, or any auditing board in the cities or villages of this State, before whom such bonds or coupons thereof may be presented in pursuance of section one of this act, to cancel the same by cutting out a portion of each bond or coupon so presented, in such manner as to effectually prevent the repayment of the same. (Laws 1871, chap. 537, § 2.)

Same.—All bonds and coupons so presented and canceled shall be deposited for safe-keeping and future reference in the office of the clerk of the county in which such towns, cities or villages are respectively situated, and said boards of town auditors or auditing

boards in any city or village shall prepare and sign a certificate showing a full description of all bonds or coupons so canceled and deposited by them, and shall file said certificate in the office of the clerk of their respective towns and villages, and in cities in the office of the clerk of the city. (Laws 1871, chap. 537, § 3.)

Municipal aid restricted.—Nothing herein contained shall be construed as permitting any municipal corporation, in or through which a railroad has already been constructed and is in operation, to aid in the construction of any other railroad under the provisions of this act, unless the railroad already built is assessed or taxed upon the assessment roll specified in this act; provided, however, that this section shall not apply to any railroad exempted from taxation by any law of this State. (Laws 1869, chap. 907, § 10; Am'd Laws 1871, chap. 925, § 3.)

The cities, towns, villages or municipalities in the counties of Cayuga and Tompkins are expressly exempted from the operation of this section (Laws 1871, chap. 260, § 1).

Proceedings to obtain town aid, how reviewed.—Review of proceedings under the acts hereby amended (*a*) shall be by certiorari, and no writ of certiorari shall be allowed unless said writ shall be allowed within sixty days after the last publication of notice of the judge's final determination, as provided in section two of this act (*b*), and, where such judgment is so entered prior to the passage of this act, unless said writ is allowed within sixty days after the passage of this act. On the return of the certiorari, the court out of which the same issued shall proceed to consider the matter brought up thereby, and shall review all questions of law and of fact determined for or against

either party by the county judge. And the said courts or court of appeals in appeals now pending, and in all future proceedings, may reverse or affirm or modify, in all questions of law or fact, his final determination, or may remand the whole matter back to said county judge to be again heard and determined by him. And it may by order direct that he proceed thereon *de novo*, in the same manner and with the same effect as if he had taken no action therein, or it may by such order specify how and in what particulars he shall hear and determine the same on such remanding thereof. Applications for certiorari shall be on notice. On review, persons taxed for dogs or highway tax only shall not be counted as taxpayers, unless that claim was made before the county judge. The county judge shall forthwith proceed to carry into effect all orders of any court on review under this act. (Laws 1871, chap. 925, § 4.)

(*a*) Laws 1869, chap. 907; Laws 1870, chap. 507. People *ex rel.* Averill *v.* Adirondack Company, 57 Barb. 656.

(*b*) Laws 1871, chap. 925, § 2, *vide ante* p. 215.

XVIII.

OF THE ASSESSMENT OF THE RAILROAD FOR THE PURPOSES OF TAXATION.

Railroads subject to taxation. — All lands and all personal estate within this State, whether owned by individuals or by corporations, shall be liable to taxation, subject to the exemptions hereinafter specified. (1 Rev. Stat. 387, § 1.)

Railroads constructed on Indian lands, are liable to taxation on such lands (The People *ex rel.* Erie R. Co. *v.* Beardsley, 52 Barb. 105).

Consolidated railroad company, how taxed. —The real estate of such new corporation, situate within this State, shall be assessed and taxed in the several towns and cities where the same shall be situated in like manner as the real estate of other railroad corporations is, or may be taxed and assessed, and such proportion of the capital stock and personal property of such new corporation shall in like manner be assessed and taxed in this State, as the number of miles of its railroad situate in this State bears to the number of miles of its railroad situate in the other State or States. (Laws 1869, chap. 917, § 6.)

To be assessed, where. — The real estate of all incorporated companies liable to taxation, shall be assessed in the town or ward in which the same shall lie, in the same manner as the real estate of individuals. All the personal estate of every incorporated

company liable to taxation on its capital, shall be assessed in the town or ward where the principal office, or place for transacting the financial concerns of the company shall be; or if such company have no principal office, or place for transacting its financial concerns, then in the town or ward where the operations of such company shall be carried on.* (1 Rev. Stat. 389, § 6.)

Intent of act. The laws of 1857 (chap. 536, § 1), construed this section in its application to railroad companies; but such enactment was repealed the following session (Laws 1858, chap. 110, § 1). The intent of the section is to give the inhabitants of the town or ward where the land is situated, the benefit of the tax on the real estate, and the inhabitants of the town or ward where the principal office of the company is, the benefit of the tax on the personal property (Albany & Schenectady R. Co. *v.* Osborn, 12 Barb. 223; Mohawk & Hudson R. Co. *v.* Clute, 4 Paige, 384; Utica Cotton &c. Co. *v.* Supervisors of Oneida, 1 Barb. Ch. 432).

Residence for purpose of taxation. The railroad company is to be assessed with reference to its real estate, as a creditor of each town and ward through which its road extends (People *ex rel.* Hudson River R. Co. *v.* Pierce, 31 Barb. 138; People *ex rel.* Buffalo &c. R. Co. *v.* Fredericks, 48 *id.* 173; s. c. 33 How. Pr. 150; criticising N. Y. & Harlem R. Co. *v.* Lyon, 16 Barb. 651; Fowler *v.* Westervelt, 40 *id.* 374; s. c. 17 Abb. Pr. 59. See also Belden *v.* N. Y. & Harlem R. Co., 15 How. Pr. 17; Sherwood *v.* Saratoga &c. R. Co., 15 Barb. 560; Johnson *v.* Cayuga &c. R. Co., 11 *id.* 621; Pond *v.* Hudson River R. Co., 17 How. Pr. 543), and where the same property is taxed in two townships, but is only liable to taxation in one, the company may apply for an interpleader to compel the tax collectors to settle the right to such tax between themselves (Mohawk & Hudson R. Co. *v.* Clute, 7 Paige, 384).

Manner of assessment. — All real and personal estate liable to taxation, shall be estimated and assessed by the assessors at its full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor. (1 Rev. Stat. 393, § 17.)

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* The remainder of the section, here omitted, relates to the assessment of of toll bridge companies.

Valuation of Road. This section was amended in 1857 (chap. 536, § 2), but so much of the amendment as required special notice to be given to the railroad company upon the completion of the assessment roll, was afterwards repealed (Laws 1858, chap. 110, § 1). The assessors are to ascertain the actual value of the land within their town, with the erections or fixtures thereon, at the time of the assessment, irrespective of the consideration whether the road is well or badly managed, or whether it is profitable to the stockholder or not (Albany & Schenectady R. Co. *v.* Osborn, 12 Barb. 223; Albany & West Stockbridge R. Co. *v.* Town of Canaan, 16 Barb. 244). They may consider the cost of the real estate, and the productiveness of its use, as part of the data, from which to judge of its value, and in order to enable them to judge how valuable that portion of the road in their town is, they are entitled to regard it as an essential portion of a valuable and completed railroad (People *ex rel.* Buffalo &c. R. Co. *v.* Fredericks, 48 Barb. 173; s. c. 33 How. Pr. 150).

Capital liable to taxation.—All moneyed or stock corporations deriving an income or profit from their capital, or otherwise, shall be liable to taxation on their capital, in the manner hereinafter prescribed. (1 Rev. Stat. 414, § 1.)

How taxed. Such capital stock is to be assessed at its actual value, and taxed in the same manner as real and personal estate (Laws 1857, chap. 456, § 3). Such portion of the capital of the company, as is invested in the railways, fixtures and real estate necessary for the operation of the railroad, is taxable as real estate (1 Rev. Stat. 387, § 2); and the residue which remains, after deducting all the company's real estate, including the railway itself, from the whole amount of capital, is taxable as personal estate (Mohawk & Hudson R. Co. *v.* Clute, 4 Paige, 384).

Statement required of company. The provisions of the twenty-three sections of title four, chapter thirteen, of the first part of the Revised Statutes, entitled "Regulations concerning the assessment of taxes on incorporated companies, and the commutation or collection thereof," under which the taxation of railroad companies had therefore been regulated (Mohawk & Hudson R. Co. *v.* Clute, 4 Paige, 384), were declared by the Laws of 1857, chap. 536, § 6, not applicable to railroad companies, and five additional sections were added to the said title, to meet such cases. These new sections, however, were repealed the following year (Laws 1858, chap. 110, § 1). Upon the well settled principle that the repeal of a repealing statute revives the act first repealed (Wheeler *v.* Roberts, 7 Cow. 536), it would seem that the application of the

twenty three sections of said title four, to railroads, is now revived. The provisions of this title, in order to enable the assessors to ascertain what part of the capital stock is taxable as personal estate, require the president or other proper officer of the company, to deliver to the assessors (as also to the comptroller) a statement under oath, showing the amount of capital paid in, or secured; the town or ward in which the principal office, or place of transacting the financial business of the company is situated, and specifying the real estate owned by the company, the places where the same is situated, and the actual amount paid for it by the company (1 Rev. Stat. 414, 415, §§ 2, 3). Section four prescribes a penalty of $250 for neglect to make such statement. The court will not interfere by injunction to relieve a company against its own mistake in its written statement, after the town and county officers have acted thereon (Mohawk & Hudson R. Co. *v.* Clute, *supra*). The duties of the assessors in making up the assessment roll, are defined in the sixth section of the same title. If the company deems itself aggrieved by the assessment roll, it is entitled to a hearing before the assessors (1 Rev. Stat. 393, § 20; see also Laws 1857, chap. 536, § 3). But although the assessors are bound to "hear and examine" such applicants, they are not thereby subjected to an arbitrary rule (People *ex rel.* Buffalo &c. R. Co. *v.* Fredericks, 48 Barb. 173). They may, nothwithstanding such examination, fix the value at such sum as they deem just, even though they grossly err in their estimate, and a tax based on such assessment, the proceedings being regular, and the assessors having jurisdiction, cannot be assailed, unless the assessed value of the property is so outrageously exaggerated as to point clearly to corruption or fraud (Albany &c. R. Co. *v.* Town of Canaan, 16 Barb. 244). But it *seems*, that the statement delivered to the assessors should be regarded as *prima facie* evidence of value (People *ex rel.* N. Y. Cent. R. Co. *v.* Ross, 15 How. Pr. 63). The assessors, however, are under no obligation to allow such statement to have any weight, when not delivered until after the completion of the assessment roll (*Id*). Where the assessment stated the length of the road, but not the number of acres of land assessed to the company: *Held*, that such omission was at most an irregularity, and did not affect its validity (Albany &c. R. Co. *v.* Town of Canaan, *supra*).

Annual statement to be delivered to county treasurer.—It shall be the duty of the clerk of the board of supervisors of the several counties of this State (except New York and Kings counties), within five days after the making out or issuing of the annual tax warrants by the board of supervisors of their respective counties, to prepare and deliver to the county treasurer a statement showing the title of all railroad

corporations in such county, as appears on the last assessment roll of the towns or cities in such county, the valuation of the property, real and personal, of such corporation in each town or city, and the amount of tax assessed or levied on such valuation in each town or city in their county. (Laws 1870, chap. 560, § 1.)

Tax, to whom paid.—Any railroad company heretofore organized under the laws of this State, or that may be hereafter organized, may, within thirty days after the receipt of such statement by the county treasurer, pay the amount of tax so assessed or levied on their property, with one per cent fees on said tax, to the county treasurer, who is hereby authorized and directed to receive such amounts and to give proper receipt therefor. (Laws 1870, chap. 506, § 2.)

Same.—Nothing in this act shall be construed to prevent any railroad company from paying their tax to the collector of towns or cities as now provided by law, nor shall the provisions of this act be construed to repeal, or in any manner interfere with the provisions of chapter nine hundred and seven of the session laws of eighteen hundred and sixty-nine. (Laws 1870, chap. 506, § 5.)

Tax, how collected.—In case any railroad company shall fail to pay such tax within said thirty days, it shall be the duty of the county treasurer to notify the collector of all towns or cities in their county, in which said company is assessed, of such failure to pay said tax, and upon receipt of such notice it shall be the duty of such collector to collect said tax in the manner now provided by law, together with five per cent fees; but no town or city collector shall collect

any tax levied or assessed upon the property of any railroad company in said counties by the supervisors of the county until the receipt of such notice from the county treasurer. (Laws 1870, chap. 506, § 3.)

Payment, how credited.—The several amounts of tax so received by the county treasurer, of and from railroad companies, shall be placed to the credit of the town or city, for or on account of which the same was levied or assessed, and to the credit of the fund or funds to which the same is now or shall be hereafter pledged or appropriated by law, and the one per cent fees also paid shall be placed to the credit of the collector of said city or town; and in case such amounts shall exceed the sum due from said town or city, the surplus shall, on demand, be paid to the supervisor of said town or city, who shall receive, hold and disburse the same as if received from the collector of said town or city. (Laws 1870, chap. 506, § 4.)

Valuation of railroad property apportioned among school-districts.—It shall be the duty of the town assessors, within fifteen days after the completion of their annual assessment list, to apportion the valuation of the property of each and every railroad company as appears on such assessment list among the several school-districts in their town, in which any portion of said property is situated, giving to each of said districts their proper portion, according to the proportion that the value of said property in each of such districts bears to the value of the whole thereof in said town. (Laws 1867, chap. 694, § 1.)

The apportionment.—Such apportionment shall be in writing, and shall be signed by said assessors, or a majority of them, and shall set forth the number of

each district and the amount of the valuation of the property of each railroad company, apportioned to each of said districts; and such apportionment shall be filed with the town clerk, by said assessors or one of them, within five days after being made; and the amount so apportioned to each district shall be the valuation of the property of each of said companies, on which all taxes against said companies in and for said districts shall be levied and assessed, until the next annual assessment and apportionment. (Laws 1867, chap. 694, § 2.)

Neglect of assessors to make apportionment.—In case the assessors shall neglect to make such apportionment, it shall be the duty of the supervisor of the town, on the application of the trustees or board of education of any district, or of any railroad company, to make such apportionment in the same manner and with the like effect as if made by said assessors. (Laws 1867, chap. 694, § 3.)

Certified statement to be furnished by town-clerk.—The town-clerk shall, whenever requested, furnish to the trustees or board of education of each district, a certified statement of the amounts apportioned to such district, and the name of the company to which the same relates. (Laws 1867, chap. 694, § 4.)

Alteration in school-district, effect of.—In case any alteration shall be made in any school-district, affecting the property of any railroad company, the officer making such alteration shall, at the same time, determine what change in the valuation of the said property in such district would be just, on account of the alteration of district, and the valuation shall be accordingly changed. (Laws 1867, chap. 694, § 5.)

XIX.

OF THE APPLICATION OF THE GENERAL RAILROAD ACT.

General act of 1850, applicable to existing corporations.—All existing railroad corporations within this State shall respectively have and possess all the powers and privileges contained in this act; and they shall be subject to all the duties, liabilities and provisions not inconsistent with the provisions of their charter, contained in sections nine, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty.one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight (except subdivision nine), thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, of this act. (Laws 1850, chap. 140, § 49.)

The sections here referred to, relate to proceedings to acquire real estate where the consent of the owner cannot be obtained. In acquiring such real estate, under the general act (Laws 1850, chap. 140, § 28, subd. 3), the company is only limited to its necessities, and the court at special term (In the matter of Rensselaer & Saratoga R. Co. *v.* Davies, *Court of Appeals decision* 1871, not yet reported), as well as a jury (See Moss *v.* Averell, 10 N. Y. 462), may pass on the question of necessity. Section two, of chapter four hundred and forty-four of Laws of 1857, provides that *any* railroad corporation in this State may acquire the title in fee, by the special proceedings of the general railway act, to any land which it may require for roadway and for necessary buildings, depots and freight grounds. It is therefore, optional with a company chartered under a special act, to proceed to acquire title to lands, in the manner provided in its charter (Clarkson *v.* Hudson River R. Co., 12 N. Y. 304; Visscher

v. Same, 15 Barb. 37; Hudson River R. Co. *v.* Outwater, 3 Sandf. 689), or under the provisions of the general act (Laws 1857, chap. 444, § 2; Mosier *v.* Hilton, 15 Barb. 657). The provisions contained in the above section, are not unconstitutional in their application to existing corporations (Suydam *v.* Moore, 8 Barb. 358).

Repeal of railroad act of 1848.—The act entitled "An act to authorize the formation of railroad corporations," passed March 26, 1848, and the acts amending the same, are hereby repealed; but all railroad companies formed under said act are hereby continued in existence, in the same manner as if said acts were not repealed; and such companies shall be subject to all the provisions, and shall have the same powers, rights and privileges, and be subject to the same duties, as if they had been incorporated under this act; and the time limited by said act, for the expenditure of ten per cent of their capital stock, is hereby extended two years from the passage of this act; and the time limited in said section of said law for their completion, is hereby extended to five years from the passage of this act; and also the time for completing any railroad organized previous to March 27, 1848, whose road was under contract prior to February 1, 1850, to be completed within the time prescribed by its charter, is hereby extended for one year. (Laws 1850, chap. 140, § 50.)

APPENDIX.

FORMS.

Articles of Association.

(*See ante, page* 9.)

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, under and in pursuance of an act of the Legislature of the State of New York, entitled "An act to authorize the formation of Railroad Corporations and to regulate the same," passed April 2d, 1850, and the acts amendatory thereof and supplementary thereto, have associated ourselves together for the purpose of constructing, maintaining and operating a railroad for public use, in the conveyance of persons and property, and for that purpose, have made, signed and executed these Articles of Association.

First. The corporate name of said company shall be Railroad Company.

Second. The company is to continue in existence for the period of years.

Third. The places from and to which said railroad is to be constructed, maintained and operated, are as follows: Commencing at or near , in the county of , and State of New York, and running thence by the most direct and feasible route, via (*here set forth the names of the towns, &c., through which it is proposed to construct said railroad*), and terminating at or near , in the county of , and State of New York.

Fourth. The length of said railroad, as nearly as may be estimated, is miles, and the same is intended to be constructed through or into the counties of .

Fifth. The amount of capital stock of said Railroad Company shall be (*it cannot be less than* $10,000 *for every mile of road proposed to be constructed*) dollars, consisting of shares, of dollars each.

Sixth. The names and places of residence of thirteen

directors of said company, who shall manage its affairs for the first year, and until others are chosen in their places, are as follows, to wit: (*here insert after the name of each director his place of residence*).

IN WITNESS WHEREOF, we have hereunto respectively subscribed our names and places of residence, and severally agree to take the number of shares of stock of said company set opposite our respective names.

Dated, &c.

Names of Subscribers.	*Places of Residence.*	*No. Shares subscribed.*

(*The Articles of Association must be signed by at least twenty-five persons. A five-cent U. S. Int. Rev. Stamp must be affixed to each sheet.*)

Affidavit of Directors to Articles of Association.

(*See ante, page* 13.)

STATE OF NEW YORK, }
COUNTY OF } ss.:

(*The affidavit should be made by at least three of the Directors named in the Articles of Association*), being severally duly sworn, each for himself doth depose and say that he is a Director named in the within (*or annexed*) Articles of Association of the Railroad Company. That one thousand dollars of stock for every mile, to wit: miles of railroad proposed to be made in, under and by virtue of said Articles of Association, has been, and is, subscribed thereto, and ten per cent paid thereon in good faith, and in cash, to the Directors named in said Articles of Association. That the amount of stock required by the second section of the act referred to, in said Articles of Association, has been in good faith subscribed, and ten per cent paid in cash thereon as aforesaid, and that it is intended in good faith to construct, maintain, and operate the railroad mentioned in said Articles of Association.

(*Signatures.*)

Sworn to before me this }
day of , 18 . }

(*The notary taking the affidavit should affix his seal.*)

Certificate of Stock.

(*Name of corporation.*)

No. (*of certificate*) (*Number of*) shares.

Shares, $ each.

THIS IS TO CERTIFY, that is entitled to shares of dollars each of the capital stock of the Railroad Company, transferrable only on the books of the said company, by the said , or his attorney, upon the surrender of this certificate.

SEAL. Witness the seal of the Railroad Company, at the city of , this day of , 18 .

(*Signature of*)
President.

(*Signature of*)
Secretary.

Transfer of Stock.

KNOW ALL MEN BY THESE PRESENTS, that I, , of , for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer, unto , of , shares of the capital stock of the Railroad Company, standing in my name on the books of said company; and I do hereby constitute and appoint the said my true and lawful attorney, irrevocable, in my name or otherwise, but to his own use and benefit, and at his own costs and charges, to take all lawful ways and means for the recovery and enjoyment thereof.

WITNESS my hand and seal, this day of , 18 .

Signed, sealed, and delivered in presence of (*Signature of Witness.*) } (*Signature and seal.*)

Power to transfer.

KNOW ALL MEN BY THESE PRESENTS, that I, , of , do hereby constitute and appoint of , my true and lawful attorney, for me and in my name and behalf, to sell, assign, and transfer to , of , the whole or any part of shares of the capital stock of the Railroad Company, standing in my name, on the books of the said company, and for that purpose to make and execute all necessary acts of assignment and transfer.

WITNESS (*&c., as in preceding form*).

Power to collect Dividend.

KNOW ALL MEN BY THESE PRESENTS, that I, , of , do authorize, constitute, and appoint , of , to receive from the Railroad Company the dividend now due me on all stock, standing in my name, on the books of the said company, and receipt for the same; and hereby ratifying and confirming all that may lawfully be done in the premises by virtue hereof.

WITNESS (*&c., as in preceding form*).

Proxy to vote at election.

KNOW ALL MEN BY THESE PRESENTS, that I, , of , do hereby appoint , of , my attorney for me, and in my stead, to vote as my proxy, at any election of the Directors of the Railroad Company, according to the number of votes I should be entitled to cast, if then personally present.

WITNESS (*&c., as in preceding form*).

Notice of filing Map and Profile.

(*See ante, page* 59.)

To (*&c., occupant of land over which route of road passes*):

TAKE NOTICE that a map and profile of the route intended to be adopted by the Railroad Company, in the county of , certified in due form of law by the president and engineer of the said company, was on the day of , 18 , duly filed in the office of the register (*or if there be no register, then in the office of the county clerk*) of the county of , and that the said route designated thereby passes over your land (*indicating the same*).

Dated, &c.

(*Signature and title of secretary of railroad company.*)

Notice of application for appointment of Commissioners.

(*See ante, page* 60.)

TO THE RAILROAD COMPANY:

TAKE NOTICE that the Petition of , together with the survey, map and profile, copies of all of which are herewith served upon you, will be presented to the Supreme Court of the State of New York, at a special term thereof, appointed to be held in and for the county of , at the court-house in the city (*or otherwise*) of , on the day of , 18 , at o'clock in the noon of that day, or as soon thereafter as counsel can be heard, and that a motion will then and there be made that the prayer of the said petition be granted.

Dated, &c.

Yours, &c.,

(*Signature of attorney for land owner.*)

[The order appointing the commissioners, report of commissioners, and subsequent proceedings thereon, may be readily drafted upon the forms furnished in the proceedings to acquire title to real estate. *Vide post*, page 252 *et seq.*]

Petition of Railroad Company for appointment of Commissioners of Appraisal.

(*See ante, page* 67.)

NEW YORK SUPREME COURT.
COUNTY OF .

In the matter of the application of the ——— Railroad Company.

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

The Petition of the Railroad Company respectfully shows, that the said company is a corporation duly organized under and by virtue of an act of the Legislature of the State of New York, entitled "An act to authorize the formation of railroad corporations, and to regulate the same," passed April 2d, 1850, and the several acts amendatory thereof and supplementary thereto; that the articles of association of said company, made and executed in due form, were filed in the office of the Secretary of State, and said company became a body corporate, pursuant to said act, on the day of , 18 ; that it is the intention of the said company, in good faith, to construct and finish a railroad from and to the places named for that purpose in said articles of association, to wit: Commencing at or near , in the county of and State of New York, and running thence, by the most direct and feasible route, via (*insert names of towns, &c., through which it is proposed to construct said railroad*), and terminating at or near , in the county of and State of New York; that ten thousand dollars for every mile of the said railroad proposed to be constructed in this State, has been in good faith subscribed to the capital stock, and ten per cent thereof paid in, as required by said act;* that the said company has surveyed the line or route of its proposed road, and has made a map or

* Laws 1851, Chap. 19, § 3, as amended (*see ante,* page 65). By the Laws of 1850, Chap. 140, § 14 (*see ante,* page 67) the whole capital stock was required to be subscribed.

survey thereof, by which such route or line is designated, and that it has located its said railroad according to such survey, and has filed certificates of such location, signed by a majority of the directors of said railroad company, in the register's office (*or, if there be no register's office in the county, then in the office of the county clerk*) of the counties of and , those being the counties, and the only counties in the State, through or into which the said railroad is to be constructed.

That the real estate which the said company seeks to acquire is bounded and described as follows: (*Insert description.*)

That the names and places of residence of the parties, so far as the same can by reasonable diligence be ascertained, who own or have, or claim to own or have, estates or interests in the said real estate, are (*insert names and places of residence*).

Your Petitioner further shows, upon information and belief, that (*insert allegations respecting said real estate. If any of the parties before recited are infants, their ages, as near as may be, must be stated, and if any of such persons are idiots or persons of unsound mind, or are unknown, that fact must be stated, together with such other allegations and statements of liens or incumbrances on said real estate, as the company may see fit to make*).

Your Petitioner further shows, that the real estate described as aforesaid, is required for the purposes of the incorporation of said company, to wit: for the purpose of constructing and operating the said proposed road, and that the said company has not been able to acquire title thereto, for the reason (*here state the reason of such inability,—as, that the owners thereof refuse to sell the same for any reasonable compensation*).

Your Petitioner therefore, with the view of acquiring title to the said real estate for the purposes aforesaid, prays for the appointment of three disinterested and competent freeholders, who reside in the said county of , where the said premises are situated, or in some county adjoining thereto, commissioners, to ascertain and appraise the compensation to be made to the owners or persons interested in the said real estate, pursuant to the provisions of said act, and for such further or other order as to the court may seem just and proper.

STATE OF NEW YORK, } ss. :
COUNTY OF }

, of , in said county, being duly sworn, doth depose and say, that he is President (*or other officer*) of the Railroad Company, the Petitioner above

named; that he has read the foregoing petition by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to those matters he believes it to be true.

Deponent further says, that the reason why the verification is not made by the Petitioner herein, is that it is a corporation; and that this deponent is an officer of the same, to wit, President (*or otherwise*), and that his knowledge is derived from having witnessed the transactions set forth in said Petition.

(*Signature.*)

Sworn to before me this day of , 187 .

Notice to be served on resident land-owner.

(*See ante, page* 68.)

(*Title.*)

To, (*&c. naming parties whose interest are to be affected by the proceedings.*)

Take Notice that the Petition of the Railroad Company, a copy of which is herewith served upon you, will be presented to the Supreme Court of the State of New York, at a special (*or* general) term thereof appointed to be held in and for the county of , at the Court House, in the city (*or otherwise*) of , on the (*the petition and notice must be served, not less than ten days prior to the presentation of the same to the court*) day of , 18 , at o'clock in the noon of that day, or as soon thereafter as counsel can be heard; and that a motion will then and there be made that the prayer of the said petition be granted.

Dated, &c.

Yours, &c.,
(*Signature of Attorney for Petitioner.*)

Notice to non-resident owners, &c., to be published.

(*See ante, page* 69.)

(*Title.*)

To , &c., and all others owning or interested in the estate hereinafter described.

TAKE NOTICE that the petition of the Railroad Company, praying for the appointment of three disinterested and competent freeholders, commissioners to ascertain and appraise the compensation to be made to the owners or persons interested in the real estate hereinafter mentioned and described, will be presented to the Supreme Court of the State of New York, at a special (*or* general) term thereof, appointed to be held in and for the county of , at the Court House in the city (*or otherwise*) of , on the (*the notice must be published once a week for one month prior to the presentation of the petition to the court*) day of , 18 , at o'clock in the noon of that day, or as soon thereafter as counsel can be heard; and that a motion will then and there be made that the prayer of the said petition be granted.

That the real estate which the said company seeks to acquire is bounded and described as follows, (*insert description*).

That the real estate described, as aforesaid, is required for the purposes of the incorporation of said company, to wit: for the purpose of constructing and operating its proposed road.

Dated, &c.

(*Signature of Attorney for Petitioner.*)

Orders appointing Commissioners.

(*See ante, page* 72.)

At a special (or general) term of the Supreme Court of the State of New York, held in and for the county of , at the Court House in the city (*or otherwise*) of , this day of , 18 .

Present:

Hon. , Justice.

(*Title.*)

On reading and filing the Petition of the Railroad Company, together with the notice accompanying the same, and proof of due service thereof, upon the parties interested herein; and after hearing of counsel for the Petitioner, and of counsel for (*insert names of landowners, &c., who appear*).

It is ordered, that , and , three disinterested and competent freeholders, residing in the county of , be, and they hereby are, appointed commissioners to ascertain and appraise the compensation to be made to (*insert names of parties*) owners or persons interested in the real estate proposed to be taken for the purposes of the incorporation of said company, to wit, for the purpose of constructing and operating its said railroad, which said real estate is situate in the county of , and is bounded and described as follows (*insert description*).

It is further ordered, that the first meeting of said commissioners be held at (*state place of meeting*) on the day of , 18 , at o'clock M.

It also appearing to the court that (*in case any party in interest is unknown, or whose residence is unknown, and who has not appeared in the proceedings by an attorney or agent; or is an infant, idiot, or of unsound mind, and has no general guardian or committee, such fact should be stated here, in the same form in which it is alleged in the petition, concluding with an order appointing some competent attorney to appear for and protect the rights of such party. See Laws* 1850, *chap.* 140, § 20, *vide ante, page* 72; *Id.* § 14, *subd.* 6, *ante, page* 71.)

Oath of Commissioners.

(*See ante, page* 75, *note a.**)

Report of Commissioners.

(*See ante, page* 74.)

(*Title.*)

To THE SUPREME COURT OF THE STATE OF NEW YORK:

The undersigned, commissioners appointed by an order of this court, made at a special (*or* general) term thereof, held in and for the county of , on the day of , 18 , to ascertain and appraise the compensation to be made to (*insert names of parties*) owners or persons interested in the real estate proposed to be taken for the purposes of the incorporation of said Railroad Company, do respectfully report:

I. That we met at the time and place designated in the said order, and, having first severally taken and subscribed the oath prescribed by the twelfth article of the Constitution of the State of New York, proceeded to view the premises described in the petition herein, and to hear the proofs and allegations of the parties.

II. That we first viewed the premises owned by aforesaid, described as follows, (*insert description*): and heard the proofs and allegations of the parties in respect thereto. That after the testimony in respect to said claim was closed, we did, without any unnecessary delay, and before proceeding to the examination of any other claim, ascertain and determine that the compensation which ought justly to be made by the said Railroad Company to the said , for the real estate aforesaid, was the sum of dollars (*proceed in the same manner as to each claim, vide note d, page* 77, *ante.*)

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* For "perform" read "discharge."

III. That the minutes of the testimony taken by us, in respect to the said claims, and each of them, is hereto annexed, marked Exhibit "A."

IV. We (or a majority of us) do further report, that the sum of dollars, ought to be paid to , Esq. (*set forth in what capacity he acts, and for whom; whether as a general or special guardian or committee of an infant, idiot, or person of unsound mind, or as an attorney appointed by the court to attend to the interests of any unknown owner or party in interest, not personally served with notice of the proceedings, and who has not appeared*), for costs, expenses, and counsel fee herein.

All of which is respectfully submitted.

Dated, &c.

(*Signatures.*)

(*Annex minutes of testimony.*)

Notice of motion to confirm Report.

(*See ante, page* 78.)

(*Title.*)

Sir,—Take notice, that on the report herein, a copy of which is herewith served upon you, the Petitioner herein will move this court, at a special (*or* general) term thereof, to be held at the court-house, in the city (*or otherwise*) of , on the day of , 18 , at o'clock, in the noon of that day, or as soon thereafter as counsel can be heard, for an order confirming the report of the commissioners appointed to ascertain and appraise the compensation to be made to the owners or persons interested in the real estate proposed to be taken by the Railroad Company, for the purposes of its incorporation.

Dated, &c.

Yours, &c.

(*Signature of attorney for petitioner.*)

To , Esq., &c.

Order confirming Report.

(*See ante, page* 78.)

At a special (*or* general) term of the Supreme Court of the State of New York, held in and for the county of , at the court-house, in the city (*or otherwise*) of , this day of, 18 ,

Present:

Hon. Justice

(*Title.*)

It appearing to the satisfaction of the court, that, upon due notice to the parties whose interests are affected herein, the Railroad Company, duly presented to the Supreme Court of the State of New York, at a special (or general) term thereof, held in and for the county of , at the court-house, in the city (*or otherwise*) of , on the day of , 18 , its Petition in due form of law, praying for the appointment of three disinterested and competent freeholders, commissioners to ascertain and appraise the compensation to be made to the owners or persons interested in the real estate, hereinafter described, proposed to be taken for the purposes of the incorporation of the said Railroad Company. That thereupon, an order was made, appointing , and , freeholders, residing in the county of , commissioners for the purposes aforesaid. That the first meeting of the said commissioners was directed by the terms of said order, to be held at (*state place of meeting*) on the day of , 18 , at o'clock M.

That on the day of , 18 , the said commissioners made a report of their proceedings, together with the minutes of the testimony taken therein, to the said court, whereby it appears that the said commissioners met at the time and place designated in said order, and having first severally taken and subscribed the oath prescribed by the twelfth article of the constitution of the State of New York, proceeded to view the premises described in said Petition,

and to hear the proofs and allegations of the parties: that the said commissioners first viewed the premises owned by , and described as follows: (*insert description*), and heard the proofs and allegations of the parties in respect thereto; that after the testimony in respect to said claim was closed, the said commissioners, without unnecessary delay, and before proceeding to the examination of any other claim, ascertained and determined, that the compensation which ought justly to be made by the said Railroad Company to the said , for the real estate aforesaid, was the sum of dollars (*proceed in like manner as to each piece of property*); and that the sum of dollars ought to be paid to Esq. (*see fourth paragraph of commissioners' report*), for costs, expenses, and counsel fee.

Now upon the proceedings herein, and upon proof of service of a copy of said report of commissioners, and notice of motion to confirm the same, upon (*insert names of parties*), and after hearing , Esq., of counsel for the petitioner herein, and , Esq., of counsel for (*insert names of land-owners, &c., who appear*) aforesaid.

It is ordered, that the said appraisal and report be, and the same hereby is, in all respects, confirmed.

It is further ordered, that the compensation awarded to , above named, be paid to (*state to whom the money is to be paid, or in what bank, and in what manner it shall be deposited by the company—Laws* 1850, *chap.* 140, § 17; *see page* 78, *ante. The court may, if there be adverse and conflicting claimants to the money, or any part of it, direct the money to be paid into court, by the said company, and may determine who is entitled to the same, and direct to whom the same shall be paid; and may in its discretion order a reference to ascertain the facts on which such determination and order are to be made—Laws* 1850, *chap.* 140, § 19; *see page* 83, *ante*).

Notice of Appeal from Report of Commissioners.

(*See ante, page* 79.)

(*Title.*)

Sir,—Take notice, that (*insert name of appellant*) appeals to the Supreme Court from the appraisal and report of , and , commissioners appointed by the said court, to ascertain and determine the compensation to be made to the owners or persons interested in the real estate proposed to be taken for the purposes of the incorporation of said Railroad Company, and from the order made thereon; or from so much thereof as affects the said (*insert name of appellant*).

Dated, &c.

Yours, &c.

To , Esq.

Notice of Argument of Appeal.

(*Title.*)

Sir,—Take notice that the appeal of , from the appraisal and report of the commissioners appointed in this matter, and the order affirming the same, or from so much thereof as affects the said , will be brought to a hearing and argument before this court, and a motion made for a new appraisal herein, at a special (*or* general) term thereof, to be held at the court-house, in , on the day of , 18 , at o'clock in the noon of that day, or as soon thereafter as counsel can be heard.

Dated, &c.

Yours, &c.

To , Esq.

Order directing re-Appraisal.

(*See ante, page* 80.)

At a special (*or* general) term of the Supreme Court of the State of New York, held in and for the county of , at the court-house, in the city (*or otherwise*) of , this day of 18 .

Present:

Hon. , Justice.

(*Title.*)

The appeal herein coming on to be heard, and after hearing , of counsel for the appellant, and , of counsel for the respondent, herein,

It is ordered, that the appraisal and report made herein, be, and the same hereby are, respectively set aside, and that the order affirming said appraisal and report, be, and the same hereby is vacated.

And it is ordered, that a new appraisal be had herein, and for that purpose it is further ordered, that , and , three disinterested and competent freeholders, residing in the county of , be, and they hereby are, appointed commissioners to ascertain and appraise the compensation to be made to (*insert names of appellants*) owners or persons interested in the real estate hereinafter described, proposed to be taken for the purposes of the incorporation of the said Railroad Company, to wit: for the purpose of constructing and operating its said railroad; which said real estate is situate in the county of , and is bounded and described as follows (*insert description*).

It is further ordered, that the first meeting of said commissioners be held at (*state place of meeting*) on the day of , 18 , at o'clock, M.

Notice to hold Company liable to laborers employed by Contractor.

(*See ante, page* 128.)

To RAILROAD COMPANY:

TAKE NOTICE, that I, , have a claim against the Railroad Company, amounting to the sum of dollars, due to me, the said , and that the claim is made for and on account of days' labor, at the rate of dollars per day, performed by me for the said Railroad Company, in constructing its road, within the thirty days last past, to wit, on the days of (*here state the months and particular days of the month upon which labor was performed and remains unpaid for*).

That no part of the said sum has been paid.

That said work was performed by me in (*here state nature of employment, and on what section of road expended*), in pursuance of an employment between me and one (*insert name*), contractor, with the said company, for the construction of (*insert what part of*) its said road.

Dated, &c.

Yours, &c.

(*Signature of laborer.*)

Verification to foregoing Notice.

(*See ante, page* 129.)

STATE OF NEW YORK, } ss:
COUNTY OF }

, being duly sworn, says that he is the claimant above named, that he has read the foregoing notice, and that the statements therein contained are true of his own knowledge.

(*Signature of laborer.*)

Sworn to before me, }
this day of , 18 . }

Notice to hold Stockholders liable to laborer of Company.

(*See ante, page* 42.)

To , Esq.:

Take notice, (*&c. as in first and second paragraphs of preceding form*).

That I shall hold you liable for the full amount of said claim.

Dated, &c.

Yours, &c.,

(*Signature of laborer.*)

Notice of laying out highway across track.

(*See ante, page* 117.)

To Railroad Company:

Take notice, that the commissioners of highways of the town of , in the county of , have duly laid out a highway, leading from to ; and that said highway crosses your railroad track (*here designate such point of crossing*), and that said road will be opened for use after the expiration of thirty days from the service of this notice upon you. You are therefore required to cause the said highway to be taken across your said track, as shall be most convenient and useful for public travel, and to cause all necessary embankments, excavations and other work to be done on your said road for that purpose, as by statute provided.

Dated, &c.

(*Signatures.*)

Consent to construction of Railroad across highway.

(*See ante, page* 119.)

County of }
Town of } ss:

We, the undersigned, commissioners of highways of said town, do hereby consent that the Railroad Company may construct a railroad across the public highway leading from (*describe highway*), provided the usefulness of said highway be not impaired.

Given under our hands, this day of , 18 .

(*Signatures.*)

Annual Statement of Emigrant Tariff required of Company.

(*See ante, page* 189.)

EMIGRANT TARIFF, FROM NEW YORK, VIA RAILROAD,
TAKING EFFECT , 18 .

Each adult passenger will be allowed lbs. of luggage, to be carried free.

Children under years of age will be carried free.

Children between the ages of and will be charged half price.

From NEW YORK to	Luggage, per 100 lbs.	Fare.	Class of Passage.
(*insert name of town & State*), all rail,	$....	$..	
(*Id.*) via Buffalo and steamer,	....	..	

Railroad Bond secured by mortgage.

(*See ante, page* 209.)

UNITED STATES OF AMERICA.
STATE OF NEW YORK.

(*Corporate name.*)

No. — $——

KNOW ALL MEN BY THESE PRESENTS, that the Railroad Company, of the State of New York, is indebted to or bearer, in the sum of dollars, lawful money of the United States of America, which sum the said company hereby promises to pay to the said or bearer, at the expiration of years from the date hereof, with interest thereon at the rate of seven per centum per annum, payable semi-annually, on the day of , in each and every year, until said principal shall be paid, upon the surrender of the respective interest warrants hereto annexed. Both principal and interest being payable at the office of said company in the city of .

This bond is one of a series of bonds, of like date and tenor, amounting, in all, to the sum of dollars, the payment of which, principal and interest, is secured by a mortgage bearing even date herewith, upon (*here designate property covered by mortgage*), made, executed and delivered by said company to , in trust for the benefit of the holders of said bonds.

In witness whereof, the said company has caused its corporate seal to be hereto affixed, and these presents to be subscribed by its president and treasurer, this day of , one thousand eight hundred and .

(*Signatures and titles of president and treasurer.*)

In presence of

(*Signature of witness.*)

Certificate of Trustee attached to Bond.

The undersigned, trustee, hereby certifies that the Railroad Company has executed and delivered to him a mortgage or deed of trust, referred to in the above bond, in trust for the benefit of the holders of its bonds of similar tenor with the foregoing, issued and to be issued to an amount not exceeding dollars, with power of foreclosure and sale in case of default in the payment of said bonds, or the interest to grow due thereon, upon request of a majority in interest of the holders of such bonds, then outstanding; and that the foregoing is one of the several bonds described in and secured by said mortgage or deed of trust; and that he has caused the said mortgage or deed of trust to be recorded in the counties of (*insert counties through which road passes*), and each of them.

(*Signature of trustee.*)

Coupon or Interest-warrant attached to Bond.

No. — $——

The Railroad Company will pay the bearer, at its office in the city of , upon the surrender hereof, on the day of , 18 , dollars, being the semi-annual interest due that day on its bond No. .

(*Signature of treasurer.*)

Railroad Mortgage.

(*See ante, page* 209.)

THIS INDENTURE, made the day of , in the year of our Lord one thousand, eight hundred and , between the Railroad Company, a corporation of the State of New York, party of the first part, and (*insert name of Trustee*) of , in the county of , and State of New York, party of the second part.

Whereas, the said party of the first part, in pursuance of the power conferred upon it by the act of the Legislature of the State of New York, entitled "An act to authorize the formation of railroad corporations, and to regulate the same," passed April 2, 1850, and the several acts amendatory thereof and supplementary thereto, are engaged in constructing a railroad from to ;

And Whereas, the said party of the first part, for the purpose of completing and operating the said railroad, has deemed it necessary to borrow money; and to that end, did, on the day of 18 , duly adopt and pass a certain resolution (*here state substance of resolution, as for example:* directing that the said company shall borrow dollars, to be applied to the construction and completion of the said railroad, and shall issue therefor bonds of dollars each, to be secured by a mortgage to the said party of the second part, upon the hereinafter described property of the said company, which said bonds shall have years to run, and shall bear interest at the rate of seven per centum per annum, payable semi-annually).

And Whereas, the president and treasurer of the said company, under, and in pursuance of, the said resolution, have issued or are about to issue coupon bonds of the said company, each bearing even date herewith, and payable in years from said date, with interest payable semi-annually, in the form following, that is to say: (*Insert form of Bond.*)

NOW THIS INDENTURE WITNESSETH, that the said party of the first part, for and in consideration of the premises and of the sum of one dollar to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and for the better securing the payment of the said bonds, hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm unto the

said party of the second part, his successors and assigns, all and singular (*insert mortgaged property, &c., as for example:* the said railroad, constructed and to be constructed, together with the real estate, railways, rails, bridges, piers, fences, privileges, rights, and franchises, now owned by the said company, or which shall hereafter be owned by it; and all lands used and occupied, or which may hereafter be used and occupied for railways, depots or stations, with all buildings erected, or which may be hereafter erected thereon; and all the locomotives, tenders, cars, carriages, tools, machinery, and equipments now owned, or hereafter to be owned by said company, or in any way belonging or appertaining to said road.) Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part of, in and to the same, and every part and parcel thereof, with the appurtenances, to have and to hold the same unto the said party of the second part, his successors and assigns forever. Provided however, and these presents are upon the express condition that if the said party of the first part, its successor or successors or assigns shall well and truly pay or cause to be paid unto the holders of the said bonds so issued or to be issued, as aforesaid, the principal and interest to grow due to them (the said holders) respectively, at the times and in the manner mentioned in the said bonds, and in the coupons or interest warrants thereto annexed, according to the true intent and meaning thereof, then these presents and the estate hereby granted shall cease, determine and be void.

And it is hereby further covenanted and agreed by the party of the first part that if any default shall be made in the payment of any of the said bonds or the coupons or interest warrants mentioned aforesaid, that shall become due thereon, or any part thereof, and such sum or sums of interest shall remain unpaid and in arrears for the space of days, that then and from thenceforth, on request of a majority in interest of the holders of such bonds then outstanding, it shall be lawful for the said party of the second part, his successors or assigns to enter into and upon all and singular, the personal and real property hereby granted or intended so to be, and every part and parcel thereof, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, its successors or assigns therein at public auction, according to law, giving due notice of the time and place of any such sale, and as the attorney for the said

party of the first part by these presents duly authorized, constituted, and appointed to make, execute, acknowledge and deliver to the purchaser or purchasers thereof, his or their heirs or assigns any deed, or deeds of conveyance, bill of sale, or other instrument in the law, sufficient to vest in him or them, the said mortgaged premises and every part thereof, and out of the moneys arising from such sale or sales, to keep and retain the principal and interest which shall then be due, on the said several bonds, to the respective holders and owners thereof, together with the costs, charges and expenses of such sale or sales of said real and personal property, rendering the overplus of the purchase money (if any there shall be), unto the said party of the first part, its successor, successors, or assigns.

And it is further covenanted and agreed by the said party of the first part, that it shall and will pay and discharge all taxes, assessments or other charges, which may, at any time, be a lien upon the premises, goods, chattels or property, hereinbefore described, or upon any part or portion thereof, or upon any property of the party of the first part, the payment whereof shall be material or necessary to the protection of the security hereby created, and in case of the default in the payment of the taxes and assessments which may be hereafter imposed and assessed upon the said real and personal property, or on the principal or interest of the said several bonds and interest warrants or coupons, intended to be secured by this mortgage, or any of them, according to the terms thereof, and the said sum or sums shall remain unpaid and in arrears for the space of days, that then and from thenceforth, it shall and may be lawful for the party of the second part, his successor, or successors, or assigns, and shall be his or their duty so to do, upon being thereto requested in writing, by a majority, in interest, of the holders and owners of the bonds issued or to be issued as aforesaid, and full power and authority is hereby given to the said party of the second part, his successor or successors, or assigns to enter into and upon, and take possession of, all and singular the premises, real and personal property hereinbefore described, and hereby granted or intended so to be, for the benefit of the holders of the said bonds, issued or to be issued as aforesaid, and to reclaim and keep possession thereof, and use and operate the same, and receive the rents, issues, income and profits thereof, for the purpose aforesaid, until a sale thereof, as hereinbefore provided shall be made, or until the money shall be received from the profits or rentals, or as may be decreed by a court of competent jurisdiction, rendering an account to the party of the first part, its successor, or successors, or assigns, and paying the surplus

moneys (if any), which may arise therefrom after paying all costs, charges and expenses, to or towards the principal or interest moneys due, or to grow due on the said bonds, debts, charges, liens and incumbrances above specified.

And it is further mutually covenanted and agreed that a trustee, or trustees may, at any time and from time to time, be substituted in the place and stead of the party of the second part, or his successor or successors, upon application to, and order of, any Justice of the Supreme Court of the State of New York, for the Judicial District, made by a majority, in interest, of the holders of the bonds which shall, at the time of such application, have been issued as aforesaid, and shall then be outstanding and unpaid, which application shall be upon at least days previous notice to the party of the second part, his successor or successors, except in case of the death of the trustee, when said application may be made without notice.

IN WITNESS WHEREOF, the said party of the first part hath hereunto caused its corporate seal to be affixed, and these presents to be subscribed by its President and Secretary the day and year first above written.

SEAL

(*Signatures and titles of President and Secretary.*)

Acknowledgment to Mortgage, by President and Secretary.

STATE OF NEW YORK, }
COUNTY OF } ss.

On this day of , in the year 18 , before me came and , to me known, who being by me duly sworn, each for himself, did depose and say: that the said is President, and the said is Secretary of the Railroad Company, the corporation described in, and which executed the foregoing mortgage; that the seal affixed to the foregoing instrument is the corporate seal of the said company, and was thereto affixed by order of the Board of Directors of said company; and that they respectively signed their names thereto by the like authority.

(*Signature and title.*)

Petition to bond City, &c., and invest proceeds in Railroad Company.

(*See ante, page* 214.)

COUNTY OF

In the matter of the application of the Taxpayers of

TO THE HONORABLE, THE COUNTY JUDGE OF THE COUNTY OF :

The Petition of the subscribers hereto, respectfully shows: That they are a majority of the tax-payers of the city (*or* town, *or* incorporated village) of , in the county of , and State of New York, whose names appear upon the last preceding assessment roll or tax list of said city (*or* town, *or* incorporated village) as owning or representing a majority of the taxable property in the corporate limits of said city (*or* town, *or* incorporated village); that they are such a majority of tax payers, and are taxed, or assessed for, or represent such a majority of taxable property; that they desire that said city (*or* town, *or* incorporated village) shall create and issue its bonds to the amount of dollars (which said amount does not exceed twenty per centum of the whole amount of taxable property, as shown by said assessment roll or tax list), and invest the same, or the proceeds thereof, in the stock (*or* bonds) of the Railroad Company (which is a railroad company in the State of New York).

And Your Petitioners pray Your Honor to cause to be published the proper notice to take proof of the facts set forth in this Petition; and that such proceedings may be had thereon as are authorized and prescribed by the statutes of the State of New York, in such case made and provided.

Dated, &c.

Names of Subscribers.	Places of Residence.

Verification to above Petition.

STATE OF NEW YORK, }
COUNTY OF } ss.

of , in said county, being duly sworn, doth depose and say, that he is one of the Petitioners herein; that he has read the foregoing Petition, by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matter therein stated on information or belief, and as to those matters, he believed it to be true.

(*Signature of one of Petitioners.*)

Sworn to before me }
this day of , 18 . }

Order for publication Notice of Hearing.

(*See ante, page* 214.)

Title.

On the Petition herein, bearing date the day of , 18 , and on motion of , Esq., attorney for said Petitioners.

IT IS ORDERED that a notice be forthwith published in the , a newspaper published in the said county of , directed to whom it may concern, and setting forth that on the day of , 18 , at o'clock in the noon of that day, the Honorable, the Judge of this Court will proceed to take proof of the facts set forth in said Petition, as to the number of tax payers joining in said Petition, and as to the amount of taxable property represented by them.

Dated, &c.

Notice of hearing to take proof of facts set forth in Petition.

(*See ante, page* 214.)

(*Title.*)

TO WHOM IT MAY CONCERN:

Notice is hereby given, that on the Petition of , and others, therein named, purporting to represent a majority of the tax payers of the city (*or* town, *or* incorporated village) of , whose names appear on the last preceding assessment roll or tax list thereof, setting forth that the said Petitioners, constituting a majority of such tax payers, as aforesaid, desire that the said city (*or* town, *or* incorporated village), shall create and issue its bonds to the amount of dollars, (which said amount, it is alleged in said Petition, does not exceed twenty per centum of the whole amount of taxable property, as shown by said assessment roll or tax list), and invest the same, or the proceeds thereof, in the stock (*or* bonds) of the Railroad Company, the Honorable , county judge of the county of , will proceed to take proof of the facts set forth in said Petition, as to the number of tax payers joining in said Petition, and as to the amount of taxable property represented by them, at the court rooms of said county court, in the of , on the day of , 18 , at o'clock in the noon of that day.

Dated, &c.

Order appointing Commissioners.

(*See ante, pages* 217 *and* 219.)

(*Title.*)

Upon the filing the Petition herein, and order made thereon, with a copy of the notice to take proof of the facts set forth in said Petition, and the affidavit of publication of the said notice in the manner required by law, and by the order made in this proceeding, as aforesaid, together with the testimony taken herein; and it appearing to the satisfaction of this court, that the whole number of tax payers in the city (*or* town, *or* incorporated village) of , whose names appear upon the last preceding assessment roll or tax list—being the assessment roll or tax list for the year 18 , is (*insert number*), and that of this number, (*insert number*) have signed the said petition, being more than one-half of said tax payers; and it further appearing that the total valuation of the taxable property of the said city (*or* town, *or* incorporated village), upon the said assessment roll or tax list is dollars, and that the valuation of the property of the petitioners, as represented upon the said assessment roll or tax list is dollars, being dollars in excess of one-half of the total valuation of the taxable property of said city (*or* town, *or* incorporated village), now, on motion of ,

IT IS ADJUDGED, DECREED, AND DETERMINED, that the said Petitioners herein do represent a majority of the tax payers of the said city (*or* town, *or* incorporated village), as shown by the last preceding tax list or assessment roll, that is to say, the tax list or assessment roll for the year ; and do represent a majority of the taxable property upon said tax list or assessment roll;

AND IT IS HEREBY ORDERED, that , and , three freeholders, residents and tax payers, within the corporate limits of said city (*or* town, *or* incorporated village) be, and they hereby are, appointed commissioners for the period of five years next ensuing, and until others are appointed by a county judge of this county, to cause to be made or executed, in due form of law, with all reasonable dispatch, bonds of the said city (*or* town, *or* incorporated village) of , of dollars each, to the amount of dollars, and to issue, sell, or dispose of the same, and invest the same or the proceeds thereof,

in, and to subscribe in the name of the said city (*or* town, *or* incorporated village) of , to the stock (*or* bonds) of the Railroad Company to the amount of dollars, and that the said commissioners, and each of them, shall have all the powers, and be subject to all the duties and liabilities imposed and prescribed by and in, an act of the Legislature of the State of New York, entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads," passed May 18th, 1869, and the several acts amendatory thereof and supplementary thereto.

AND IT IS FURTHER ORDERED, that notice of the final determination herein, as aforesaid, be forthwith published in the , a newspaper published in the said county of , once, (*or more at the discretion of the judge*) in each week for three weeks.

Dated, &c.

Notice of final determination, and Appointment of Commissioners.

(*See ante, page* 218.)

(*Title.*)

TO WHOM IT MAY CONCERN:

Notice is hereby given, in pursuance of the statute in such case made and provided, that on the day of , 18 , duly entered herein, whereby it was adjudged and determined that the said Petitioners herein, did represent a majority of the tax payers of the city (*or otherwise*) of , as shown by the last preceding tax list or assessment roll, and further, did represent a majority of the taxable property upon said tax list or assessment roll; and it was thereupon ordered that , and , therein named, be, and they thereby were, appointed commissioners to cause to be made or executed, in due form of law, with all reasonable dispatch, bonds of the said city (*or otherwise*) of , of dollars each, to the amount of dollars, and to issue, sell or dispose of the same, and invest the same or the proceeds thereof in, and to subscribe in the name of the said city (*or otherwise*) of , to the stock (*or* bonds) of the Railroad Company to the amount of dollars.

Dated, &c.

Articles of Agreement and Consolidation.

(*See ante, page* 203.)

ARTICLES OF AGREEMENT AND CONSOLIDATION, made this day of , in the year of our Lord one thousand eight hundred and , by and between the Railroad Company, of the State of New York, party of the first part, and the Railroad Company of , party of the second part, Witnesseth:

Whereas, the parties of the first and second parts are desirous of consolidating with each other, under and in pursuance of an act of the Legislature of the State of New York, entitled "An act authorizing the consolidation of certain railroad companies," passed May 20, 1869.

And whereas, the said parties of the first and second parts have agreed upon the terms and conditions hereinafter set forth as the terms and conditions of such consolidation.

And whereas, the terms of such consolidation have been approved of, by two-thirds, in interest, of the stockholders of the respective parties hereto in person or by proxy, at meetings held by them respectively and separately, for the purpose of taking into consideration the said articles of agreement and consolidation, due notice of the time and place of holding said meeting, and the object thereof, having been given by each of said corporations to its stockholders, in manner required by law.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That in consideration of the mutual agreements, covenants, provisions and grants herein contained, the said parties of the first and second parts, do, by these presents, merge, combine and consolidate their respective capital stocks, franchises, grants, immunities, privileges, capacities, properties and rights of way, of every name and nature, into one company, to be called and known by the corporate name and style of the Railroad Company, which said consolidated company shall, from henceforth, have and possess all and singular the rights, franchises, powers, immunities, privileges and capacities which are, or have been, granted to, or conferred upon, or possessed, or enjoyed by either of the said parties hereto, by or under the laws or enactments of the said State of New York. (*In case one of said companies is a resident of another State, modify this clause accordingly.*)

AND THIS AGREEMENT FURTHER WITNESSETH: That the said parties of the first and second parts have agreed upon, and by these presents do agree upon and prescribe the following as the terms and conditions of such consolidation; which

terms and conditions the said parties of the first and second parts mutually covenant, promise and agree to observe, keep and perform, viz:

Article 1. The corporate name of the said consolidated company shall be the Railroad Company.

Article 2. The number of directors of the said consolidated company shall be .

Article 3. The names and places of residence of the directors and other officers of said consolidated company, who shall be the first directors and officers thereof, and shall manage its affairs for the first year and until others are chosen in their places, are as follows, to wit: (*insert names and places of residence*).

Article 4. The amount of capital stock of said consolidated company shall be dollars, consisting of shares, of dollars each.

Article 5. The capital stock of the Railroad Company shall be convertible into the capital stock of the said consolidated company, at the rate of shares of the capital stock of said consolidated company for shares of the capital stock of the Railroad Company.

Article 6. The first regular annual meeting of the stockholders of said consolidated company, for the purpose of electing directors and officers of said company for the year then next ensuing, shall be held on the (*specify the time*). Special meetings may be called at any time, by a majority of the board of directors.

&c., &c., &c.

And these Presents further witness: That the said party of the first part, in consideration of the premises, and of the sum of one dollar to it paid by the party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant, convey, assign, set over to, and vest in, said consolidated company, for the purposes of such consolidation, all the railroads of the said party of the first part, and all equipments, implements and materials used or acquired therefor, and the rights, privileges, immunities, franchises, powers, and all the lands and property, moneys and effects, real and personal and mixed, and all rights of action and things of every name or nature, now held or owned by the said party of the first part, or in, or to which, the said party of the first part hath any right, title, interest or claim, either in law or equity.

(*Same agreement on part of party of second part.*)

And the said parties of the first and second parts, for the consolidation aforesaid, do mutually agree and declare that the said consolidation shall take effect, and the said consolidated company go into operation immediately upon the due execution of the present articles.

And the board of directors of the said consolidated company shall have full power to carry the said consolidation into effect, by all necessary or proper acts for that purpose.

In testimony whereof, the said parties of the first and second parts have caused their respective corporate seals to be hereunto affixed, and the same to be attested by their respective presidents and secretaries, the day and year first above written.

The Railroad Company,
By —— ——, President.
—— ——, Secretary.

The Railroad Company,
By —— ——, President.
—— ——, Secretary.

(*For acknowledgment, see page* 266.)

Certificate of Secretary of respective Companies, to above Articles.

The undersigned, Secretary of the Railroad Company, hereby certifies that at a meeting of the stockholders of the said Railroad Company, held at the office of said company, in the city of , due notice of the time and place of holding said meeting, and the object thereof, being given to the stockholders of said company, the within articles of agreement and consolidation between the Railroad Company and the said Railroad Company, were, in pursuance of the notice aforesaid, submitted to the stockholders of said company, for their action thereon. That the following resolution, to wit (*insert resolution, as for example*: "Resolved, that the stockholders of the Railroad Company do hereby approve and consent to the terms of the consolidation of this company with the Railroad Company, expressed in the articles of agreement and consolidation submitted, and that the same be, and they hereby are, adopted, and that the president of this company be, and he hereby is, empowered to cause the said articles to be duly executed in behalf of this company, and to be carried into full execution,") was moved and seconded, and a vote by ballot taken for the adoption or rejection of the same. That votes were cast, of which votes were in favor of the adoption of the above resolution, being two-thirds of all the votes of all the stockholders. That thereupon the said resolution was declared to be adopted.

In witness whereof, I have hereunto set my hand, together with the corporate seal of the said Railroad Company, as required by law.

TABLE OF RAILROAD CHARTERS

AND LOCAL ENACTMENTS,

FROM 1826 TO 1871 INCLUSIVE.

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(References which the compiler was unable to classify are printed in *Italics.*)

Adirondack Railroad.—Incorporated, Laws 1839, ch. 120. Time for completion of road extended, Laws 1862, ch. 90; Laws 1865, ch. 60. Aid to, Laws 1863, ch. 236; Am'd Laws 1868, ch. 718; Laws 1871, ch. 857. May extend road, Laws 1865, ch. 250. Lands of, exempt from taxation, Laws 1868, ch. 850.

Albany Railroad.—Privileges granted by city of Albany to, confirmed, Laws 1864, ch. 183; Am'd Laws 1869, ch. 743. Rate of fare on, Laws 1869, ch. 743.

Albany Northern Railroad.—Municipal aid to, Laws 1854, ch. 63.

Albany and Schenectady Railroad.—Mohawk and Hudson changed to, Laws 1847, ch. 91. Report required of, Laws 1847, ch. 270. May borrow money, Laws 1851, ch. 20. May consolidate with Schenectady & Troy Railroad Co. &c., Laws 1853, ch. 76. Incorporated, Laws 1867, ch. 459.

Albany and Schenectady Turnpike.—Railroad franchise conferred on, Laws 1830, ch. 319.

Albany and Susquehanna Railroad.—Municipal aid to, Laws 1852, ch. 113; Laws 1852, ch. 195; Laws 1852, ch. 373; Laws 1856, ch. 64; Laws 1857, ch. 401; Laws 1863, ch. 18; Laws 1864, ch. 402; Laws 1865, ch. 145; Laws 1870, ch. 585. Time to construct road extended, Laws 1853, ch. 42. May increase capital stock, Laws 1859, ch. 384. State aid to, Laws 1867, ch. 164; Laws 1863, ch. 70. Time for completion of, extended, Laws 1857, ch. 398; Laws 1867, ch. 747.

Albany and Vermont Railroad.—Incorporated, Laws 1848, ch. 237. May construct branch road, Laws 1863, ch. 11.

Albany and West Stockbridge Railroad.—Castleton and West Stockbridge Railroad, changed to, Laws 1836, ch. 262. (See *Castleton and West Stockbridge.*) Charter amended, Laws 1838, ch. 96; Laws 1840, ch. 111. Municipal aid to, Laws 1837, ch. 390; Laws 1839, ch. 340; Laws 1841, ch. 347. May increase capital stock, Laws 1841, ch. 290. Rate of fare on,* Laws 1866, ch. 912.

Albany to Ithaca.—Public use of railroad from, declared, Laws 1848, ch. 243.

Albion and Tonawanda Railroad.—Incorporated, Laws 1832, ch. 160.

Allegany Valley Railroad.—Railroad corporations may subscribe to capital stock of, Laws 1854, ch. 13.

American and Mexican Railroad and Telegraph.—Incorporated, Laws 1863, ch. 359.

Astoria and Hunter's Point Railroad.—Incorporated, Laws 1867, ch. 662. May change route of road, Laws 1868, ch. 411.

Atlantic and Great Western Railroad.—Authorizing sale of whole or part of "The Erie and New York City Railroad" to, Laws 1860, ch. 234. Atlantic and Great Western Railroad (in N. Y.) may consolidate with Buffalo extension of, Laws 1865, ch. 614.

Atlantic and Pacific Railroad.—Incorporated, Laws 1853, ch. 635.

Attica and Allegany Valley Railroad.—Railroad corporations may subscribe to capital stock of, Laws 1853, ch. 460. May change line of road, Laws 1853, ch. 500. Municipal aid to, Laws 1853, ch. 653; Am'd Laws 1854, ch. 374; Laws 1868, ch. 251; Laws 1868, ch. 584.

Attica and Buffalo Railroad.—Incorporated, Laws 1834, ch. 242. Charter amended, Laws 1838, ch. 283; Laws 1843, ch. 169; Laws 1847, ch. 29; Laws 1849, ch. 113. Construction of, in city of Buffalo, Laws 1843, ch. 169. May consolidate with Tonawanda Railroad, Laws 1850, ch. 236. Report required of, Laws 1844, ch. 335; Laws 1847, ch. 270. Acts of commissioners of, confirmed, Laws 1842, ch. 80.

Attica and Hornellsville Railroad.—Incorporated, Laws 1845, ch. 336. Charter amended, Laws 1849, ch. 353; Laws 1850, ch. 5; Laws 1851, ch. 77; Laws 1852, ch. 162. May purchase Buffalo and Rochester Railroad, Laws 1851, ch. 76. Railroad companies may subscribe to capital stock of, Laws 1851, ch. 117.

Attica and Sheldon Railroad.—Incorporated, Laws 1836, ch. 415.

Auburn to Binghampton.—Public use of railroad from, declared, Laws 1849, ch. 71.

Auburn and Canal Railroad.—Incorporated, Laws 1832, ch. 233.

Auburn and Owasco Lake Railroad.—Incorporated, Laws 1871, ch. 528.

Auburn and Rochester Railroad.—Incorporated, Laws 1836, ch. 349. Charter amended, Laws 1837, ch. 11; Laws 1838, ch. 290; Laws 1841, ch. 184. State aid to, Laws 1840, ch. 195. Report required of, Laws 1844, ch. 335; Laws 1847, ch. 270. Tonawanda

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* Bound with Laws of 1867, page 12.

Railroad may connect with, Laws 1844, ch. 50. Regarding location of track of, Laws 1846, ch. 179. May borrow money, Laws 1847, ch. 93. May consolidate with Auburn and Syracuse Railroad, Laws 1850, ch. 239.

Auburn and Syracuse Railroad.—Incorporated, Laws 1834, ch. 228. Authorizing sale of State lands to, Laws 1837, ch. 158. State aid to, Laws 1838, ch. 293. Charter amended, Laws 1838, ch. 57; Laws 1839, ch. 257; Laws 1847, ch. 131. Report required of, Laws 1844, ch. 335; Laws 1847, ch. 270. May consolidate with Auburn and Rochester Railroad, Laws 1850, ch. 239.

Aurora and Buffalo Railroad.—Incorporated, Laws 1832, ch. 132. Charter amended, Laws 1837, ch. 278.

Avenue C Railroad (N. Y. City).—Construction of, authorized, Laws 1868, ch. 625. May extend its road, Laws 1871, ch. 19.

Avon, Geneseo and Mount Morris Railroad.—May increase rate of fare, Laws 1863, ch. 249. May extend its road and increase capital stock, Laws 1871, ch. 394.

Babylon Railroad (Long Island).—Incorporated, Laws 1871, ch. 517.

Bath and Crooked Lake Railroad.—Incorporated, Laws 1831, ch. 83; Laws 1834, ch. 263.

Binghamton and Port Dickinson Railroad.—Incorporated, Laws 1868, ch. 501. Charter amended, Laws 1869, ch. 447; Laws 1871, ch. 379.

Binghamton and Susquehanna Railroad.—Incorporated, Laws 1833, ch. 289.

Black River Railroad.—Incorporated, Laws 1832, ch. 174; see also, Laws 1836, ch. 419.

Black River and Oswegatchie Railroad.—Incorporated, Laws 1866, ch. 558.

Black River and St. Lawrence Railroad.—May apply for appraisal of lands, Laws 1868, ch. 182. Act to legalize articles of association of, Laws 1869, ch. 579. Municipal aid to, Laws 1868, ch. 115; Am'd Laws 1870, ch. 669. Authorized to carry passengers and property, Laws 1871, ch. 826.

Black River and Utica Railroad.—Municipal aid to, Laws 1853, ch. 278; Laws 1858, ch. 1; and see, Laws 1866, ch. 426; Am'd Laws 1867, ch. 870; see also, Laws 1870, ch. 28, § 17. May apply for appraisal of land, Laws 1854, ch. 12. Act for relief of mortgagees of, Laws 1860, ch. 134. May increase rate of fare, Laws 1856, ch. 117. Time for construction of extended, Laws 1857, ch. 226.

Black River Valley Railroad.—Municipal aid to, Laws 1866, ch. 625.

Black River and Woodhull Railroad.—Incorporated, Laws 1868, ch. 625.

Bleeker Street and Fulton Ferry Railroad (N. Y. City).—Incorporated, Laws 1860, ch. 517.

Blossburgh and Corning Railroad.—May increase capital stock, &c., Laws 1864, ch. 193.

Bloss Coal Mining and Railroad Co., (Pa).—May hold lands in this State, Laws 1868, ch. 54.

Boonville and Ontario Railroad.—May apply for appraisal of land, Laws 1870, ch. 369.

Boston, Hartford and Erie Railroad.—Regarding mortgage of, Laws 1866, ch. 789. Consolidated with Boston, Hartford and Erie Extension, &c., Laws 1864, ch. 385.

Boston, Hartford and Erie Extension.—May consolidate with Boston, Hartford and Erie Railroad, Laws 1864, ch. 385.

Boston to Hudson River.—Act to facilitate construction of railroad from, Laws 1828, ch. 213,

Brantford and Buffalo Joint Stock Railroad.—Municipal aid to, Laws 1852, ch. 147.

Brewerton and Syracuse Railroad.—Incorporated, Laws 1836, ch. 302.

Broadway Railroad (Brooklyn).—Construction of authorized, Laws 1858, ch. 303. Act relating to laying of tracks of, Laws 1860, ch. 461. Route of, authorized, Laws 1861, ch. 222.

Broadway and Seventh Avenue Railroad (N. Y. City).—Incorporated, Laws 1860, ch. 513. Change of route of, Laws 1866, ch. 506; Am'd Laws 1867, ch. 904.

Brooklyn, Bath and Coney Island Railroad.—Construction of, authorized, Laws 1862, ch. 407.

Brooklyn and Canarsie Railroad.—Consolidated with South Brooklyn and Bergen Street Railroad, Laws 1865, ch. 358.

Brooklyn Central Railroad.—Consolidated with Brooklyn and Jamacia Railroad, Laws 1860, ch. 460.

Brooklyn Central and Jamaica Railroad.—Agreement with Brooklyn City Railroad confirmed, Laws 1861, ch. 39. May change route of its road, Laws 1863, ch. 510. May consolidate with Brooklyn Central Railroad, Laws 1860, ch. 460. See Laws 1868, ch. 539.

Brooklyn City Railroad.—Act in relation to construction of, Laws 1854, ch. 77; Am'd Laws 1855, ch. 274. Agreement with Brooklyn Central and Jamaica Railroad, confirmed, Laws 1861, ch. 39. May lay track on Flatbush Plankroad, Laws 1860. ch. 392.

Brooklyn City, Hunters Point and Prospect Park Railroad.—Route of, extended, Laws 1870, ch. 605.

Brooklyn City and Newton Railroad.—May issue preferred stock, &c., Laws 1866, ch. 680. Change of track authorized, Laws 1869, ch. 736.

Brooklyn City and Ridgewood Railroad.—May reduce capital stock, &c., Laws 1864, ch. 248.

Brooklyn, East New York and Rockaway Railroad.—Construction of, authorized, Laws 1864, ch. 322.

Brooklyn, Flatbush and Coney Island Railroad.—Construction of, authorized, Laws 1866, ch. 671.

Brooklyn, Fort Hamilton, Bath and Coney Island Railroad.—Incorporated, Laws 1836, ch. 306.

Brooklyn and Jamacia Railroad.—Incorporated, Laws 1832, ch. 256. Charter amended, Laws 1848, ch. 373; Laws 1860, ch. 460. May

demise its road to Long Island Railroad, Laws 1836, ch. 94. May alter route of part of Brooklyn and Jamaica Turnpike, Laws 1837, ch. 377.

Brooklyn, Prospect Park and Flatbush Railroad.—Construction of, authorized, Laws 1867, ch. 895.

Brooklyn and Rockaway Beach Railroad.—May abandon part of its road, Laws 1864, ch. 172; Laws 1866, ch. 366. May extend road to Hunter's Point, Laws 1871, ch. 759.

Brooklyn Steam Transit Co.—Incorporated, Laws 1871, ch. 940.

Brooklyn and Winfield Railroad.—Construction of, authorized, Laws 1869, ch. 718. Name changed to Brooklyn, Winfield & Newtown Railroad, Laws 1870, ch. 612. (See Brooklyn, Winfield and Newtown Railroad.)

Brooklyn, Winfield and Newtown Railroad.—Brooklyn & Winfield, changed to, Laws 1870, ch. 612. May extend its road, Laws 1871, ch. 622. (See Brooklyn and Winfield Railroad.)

Buffalo and Alleghany Valley Railroad.—May sell road to Buffalo & Pittsburg Railroad, Laws 1858, ch. 231. May extend road, Laws 1862, ch. 143. Consolidated with Buffalo & Washington Railroad, Laws 1865, ch. 439. (See Buffalo & Washington Railroad, and Buffalo, New York and Philadelphia Railroad.)

Buffalo and Batavia Railroad.—Incorporated, Laws 1838, ch. 241.

Buffalo and Black Rock Railroad.—Incorporated, Laws 1833, ch. 292. Authorized to construct road on State lands, Laws 1834, ch. 91. Appraisal of canal damages to, Laws 1851, ch. 289.

Buffalo and Bradford Railroad.—May consolidate with Buffalo & Pittsburg Railroad, Laws 1858, ch. 102. (See Buffalo and Pittsburg Railroad.)

Buffalo, Bradford and Pittsburgh Railroad.—Time for completion of, extended, Laws 1860, ch. 40.

Buffalo City Railroad.—Incorporated, Laws 1867, ch. 565. Time for completion of, extended, Laws 1869, ch. 764.

Buffalo and Conhocton Valley Railroad.—Name changed to Buffalo, Corning & New York Railroad, Laws 1862, ch. 41. (See Buffalo, Corning & New York Railroad.)

Buffalo, Corning and New York Railroad.—Name changed from Buffalo & Conhocton Valley Railroad, Laws 1852, ch. 41. May increase capital stock, Laws 1854, ch. 146. Time for completion of, extended, Laws 1855, ch. 460.

Buffalo, Corry and Pittsburg Railroad.—Act in regard to supply of water required for, Laws 1868, ch. 847. Railroad companies may loan credit to, Laws 1869, ch. 715.

Buffalo East Side Street Railroad.—Incorporated, Laws 1870, ch. 774. Charter amended, Laws 1871, ch. 886.

Buffalo and Erie Railroad.—Incorporated, Laws 1832, ch. 129. Charter amended, Laws 1836, ch. 263.

Buffalo Extension of Atlantic and Great Western Railroad.—May consolidate with Atlantic & Great Western Railroad (in New York), Laws 1865, ch. 614.

Buffalo and Hinsdale Railroad.—Incorporated, Laws 1846, ch. 256.

Buffalo and Lake Huron Railroad.—May purchase and hold real estate, Laws 1857, ch. 360. Declared a corporation under general act of 1850, Laws 1858, ch. 121.

Buffalo and Lockport Railroad.—May consolidate with Buffalo & Rochester Railroad, &c., Laws 1853, ch. 76.

Buffalo and New York City Railroad.—May construct branch road, Laws 1853, ch 168; Laws 1853, ch. 525. May increase capital stock, Laws 1854, ch. 356.

Buffalo, New York and Erie Railroad.—Manner of acquiring real estate for, Laws 1858, ch. 29.

Buffalo, New York and Philadelphia Railroad.—Buffalo & Washington Railroad, changed to, Laws 1871, ch. 429. (See Buffalo & Washington Railroad.)

Buffalo and Niagara Falls Railroad.—Incorporated, Laws 1834, ch. 269. Charter amended, Laws 1841, ch. 73; Laws 1846, ch. 213; Laws 1849, ch. 252. May consolidate with Lewiston Railroad, Laws 1851, ch. 275; Laws 1853, ch. 46. May loan credit to railroad from Lockport to Tonawanda, Laws 1852, ch. 297.

Buffalo and Oil Creek Cross-Cut Railroad.—Municipal aid to, Laws 1857, ch. 711; Laws 1866, ch. 430. May consolidate with Cross-Cut Railroad of Pennsylvania, Laws 1867, ch. 753.

Buffalo and Pittsburg Railroad.—Weight of iron rails used by, Laws 1856, ch. 151. Time for completion of, extended, Laws 1857, ch. 219. May consolidate with Buffalo & Bradford Railroad, Laws 1858, ch. 102. May purchase Buffalo & Allegany Railroad, Laws 1858, ch. 231. Municipal aid to, Laws 1853, ch. 256; Laws 1853, ch. 351; Laws 1854, ch. 337; Laws 1859, ch. 348; Laws 1864, ch. 344; Laws 1868, ch. 795; Laws 1871, ch. 656. May terminate road at north Pennsylvania State line, Laws 1853, ch. 496. May use iron rail of less than prescribed weight, Laws 1856, ch. 151.

Buffalo and Rochester Railroad.—May convey road to Attica & Hornellsville Railroad, Laws 1851, ch. 76. Time for completion of, extended, Laws 1852, ch. 91. May consolidate with Rochester, Lockport & Niagara Falls Railroad, Laws 1853, ch. 76.

Buffalo and State Line Railroad.—Public use of, declared, Laws 1848, ch. 301. Railroads may loan credit to, Laws 1850, ch. 147. Organization of, confirmed, Laws 1852, ch. 43. May consolidate with the Erie & North-east Railroad Co., Laws 1867, ch. 66. May purchase or lease property of Erie & North-east Railroad Co., Laws 1857, ch. 362.

Buffalo Street Railroad.—Act for relief of, Laws 1866, ch. 479. May purchase Niagara Street Railroad, Laws 1868, ch. 322.

Buffalo and Washington Railroad.—Consolidated with Buffalo and Alleghany Valley Railroad, Laws 1865, ch. 439. May consolidate with Sinnomohoning & Portage Railroad, Laws 1866, ch. 672. May apply for appraisal of lands, Laws 1868, ch. 122. Municipal aid to, Laws 1864, ch. 344; Laws 1866, ch. 840; Laws 1866, ch. 849; Laws 1868, ch. 142; Laws 1868, ch. 308; Laws 1868, ch. 334; Laws 1868, ch. 666; Laws 1868, ch. 719; Laws 1869, ch. 331; Laws 1870, ch. 670. Name changed to Buffalo, New York & Philadelphia Railroad, Laws 1871, ch. 429.

Buffalo and Williamsville Railroad.—Incorporated, Laws 1868, ch. 414. Re incorporated, Laws 1870, ch. 671.

Canajoharie and Catskill Railroad.—Incorporated, Laws 1830, ch. 265. Charter amended, Laws 1837, ch. 217. Municipal aid to, Laws 1837, ch. 321. State aid to, Laws 1838, ch. 240.

Canandaigua Railway.—Incorporated, Laws 1828, ch. 196.

Canandaigua and Corning Railroad.—Incorporated, Laws 1845, ch. 328. Charter amended, Laws 1846, ch. 181; Laws 1847, ch. 70; Laws 1849, ch. 129; Laws 1850, ch. 54.

Canarsie to Gravesend.—Railroad from, authorized, Laws 1863, ch. 513.

Carthage, Watertown and Sackett's Harbor Railroad.—Town aid to, Laws 1869, ch. 75; Am'd Laws 1870, ch. 52.

Cassadaga and Erie Railroad.—Incorporated Laws 1836, ch. 408.

Castleton and West Stockbridge.—Incorporated, Laws 1834, ch. 292. Name changed to Albany and West Stockbridge Railroad, Laws 1836, ch. 262. (See Albany and West Stockbridge Railroad.)

Catskill and Ithaca Railroad.—Incorporated, Laws 1828, ch. 306. Charter amended, Laws 1829, ch. 62.

Cattaraugus Railway.—Confirming acts of tax-payers relative to municipal aid to, Laws 1868, ch. 510. Time for beginning construction of, extended, Laws 1870, ch. 278.

Cayuga Lake Railroad.—Town aid to, Laws 1869, ch. 314; Am'd Laws 1870, ch. 152.

Cayuga and Susquehanna Railroad.—Incorporated, Laws 1843, ch. 221. Charter amended, Laws 1846, ch. 180; Laws 1847, ch. 150; Laws 1851, ch. 103. Use of pier granted to, Laws 1850, ch. 231. Capital stock of, reduced, Laws 1859, ch. 94.

Cazenovia and Canastota Railroad.—Rate of passenger fare of, Laws 1869, ch. 145. Municipal aid to, Laws 1868, ch. 140.

Chemung Railroad.—Incorporated, Laws 1845, ch. 350. Charter amended, Laws 1847, ch. 96; Laws 1853, ch. 82; Laws 1857, ch. 286.

Chemung and Ithaca Railroad.—Incorporated, Laws 1837, ch. 466. Charter amended, Laws 1838, ch. 239,

Chenango Valley Railroad.—Incorporated, Laws 1863, ch. 198. Charter amended, Laws 1865, ch. 673.

Central Railroad (of Long Island).—May construct draw-bridge over Flushing Creek, Laws 1871, ch. 921.

Central Park, North and East River Railroad.—Incorporated, Laws 1860, ch. 511.

Cherry Valley and Mohawk River Railroad.—Municipal aid to, Laws 1864, ch. 255. Time for completion of, extended, Laws 1866, ch. 488. May connect with Albany and Susquehanna Railroad, Laws 1867, ch. 932. Name changed to Cherry Valley, Sharon and Albany Railroad, Laws 1869, ch. 147. (See Cherry Valley, Sharon and Albany Railroad.)

Cherry Valley, Sharon and Albany Railroad.—Cherry Valley and Mohawk Railroad changed to, Laws 1869, ch. 147. May extend its road, Laws 1871, ch. 209. (See Cherry Valley and Mohawk Railroad.)

Cherry Valley and Spraker's Horse-power Railroad.—Incorporated, Laws 1860, ch. 255. Charter amended, Laws 1864, ch. 199. Municipal aid to, Laws 1864, ch. 73; Laws 1864, ch. 199.

Cherry Valley and Susquehanna Railroad.—Incorporated, Laws 1836, ch. 434.

Chittenango depot to village of Cazenovia.—Act in aid of construction of railroad from, Laws 1868, ch. 876.

Clifton Iron Co.—Railroad franchise conferred on, Laws 1868, ch. 195.

Clove Branch Railroad.—Extension of road of, Laws 1869, ch. 68; Am'd Laws 1870, ch. 502.

Coeyman's Railroad.—Incorporated, Laws 1836, ch. 434.

Cold Spring Railroad.—Incorporated, Laws 1839, ch. 299.

Coney Island and Brooklyn Railroad.—Construction of, authorized, Laws 1861, ch. 324. May extend its road, Laws 1868, ch. 675.

Cooperstown and Cherry Valley Railroad.—Incorporated, Laws 1837, ch. 422.

Cooperstown and Susquehanna Valley Railroad.—Municipal aid to, Laws 1865, ch. 758; Laws 1867, ch. 422; Laws 1869, ch. 519. Certain privileges granted to, Laws 1866, ch. 787.

Corning and Blossburgh Railroad.—Tioga Railroad changed to, Laws 1851, ch. 90.

Coxsackie and Schenectady Railroad.—Incorporated, Laws 1837, ch. 434. Charter amended, Laws 1838, ch. 225.

Cross-Cut Railroad (Pa).—May consolidate with Buffalo and Oil Creek Cross-cut Railroad, Laws 1867, ch. 753.

Dansville and Rochester Railroad.—Incorporated, Laws 1832, ch. 52.

Delaware Railroad.—Incorporated, Laws 1836, ch. 406.

Delaware, Lackawana and Western Railroad.—May make contracts in this State, Laws 1855, ch. 244. May purchase lands in this State, Laws, 1864, ch. 124. May purchase real estate in city of New York, Laws 1865, ch. 406.

Division Avenue Railroad (Brooklyn).—Construction of, authorized, Laws 1853, ch. 468. Charter amended, Laws 1854, ch. 46.

Dry Dock, East Broadway and Battery Railroad.—Construction of, authorized, Laws 1860, ch. 512. May extend road, Laws 1866, ch. 866; Laws 1866, ch. 868; Laws 1866, ch. 883.

Dunkirk and Fredonia Railroad.—Incorporated, Laws 1864, ch. 265. Charter amended, Laws 1866, ch. 34.

Dunkirk, Warren and Pittsburg Railroad.—Municipal aid to, Laws 1867, ch. 672; Laws 1868, ch. 427; Laws 1870, ch. 282.

Dutchess Railroad.—Incorporated, Laws 1832, ch. 61. See also Laws 1836, ch. 477.

Dutchess and Columbia Railroad.—Act to facilitate acquisition of real estate required by, Laws 1867, ch. 486; Am'd, Laws 1868, ch. 184. Municipal aid to, Laws 1868, ch. 201. May change northern terminus of road, Laws 1868, ch. 184.

East Genesee St. and Seward Ave. Railway (Auburn).—Incorporated, Laws 1871, ch. 527.

East New York and Jamaica Railroad.—Incorporated, Laws 1863, ch. 507. Charter amended, Laws 1865, ch. 760; Laws 1866, ch. 80. May consolidate with Jamaica and Brooklyn Plank-road Co., Laws 1871, ch. 224.

Elevated Railway (Greenwich St., New York).—Construction of, authorized, Laws 1867, ch. 489. Time for construction of, extended, Laws 1868, ch. 855.

Elmira and Horseheads Railway.—Construction of, authorized, Laws 1866, ch. 659. Act 1866, revived, Laws 1870, ch. 233. Articles of Association confirmed, Laws 1871, ch. 442.

Elmira and Williamsport Railroad.—Incorporated, Laws 1832, ch. 216. Charter revived, Laws 1846, ch. 190.

Erie Railway.—Concerning organization of, upon foreclosure sale of New York and Erie Railroad, Laws 1862, ch. 66. May increase capital stock, Laws 1864, ch. 561. May run cars through certain streets in city of Buffalo, Laws 1866, ch. 851. Restrictions in regard to directors of, Laws 1868, ch. 278; Am'd, Laws 1869, ch. 216. (See New York and Erie Railroad.)

Erie and Cattaraugus Railroad.—Incorporated, Laws 1837, ch. 432.

Erie and Genesee Valley Railroad.—Municipal aid to, Laws 1853, ch. 287; Laws 1868, ch. 442; Laws 1869, ch. 648. May apply for appraisal of lands, Laws 1869, ch. 336.

Erie and New England Railroad.—May establish steam ferry across Hudson River, Laws 1868, ch. 582.

Erie and New York City Railroad.—Sale of, to the Atlantic and Great Western Railroad, authorized, Laws 1860, ch. 234. Municipal aid to, Laws 1855, ch. 132; Laws 1862, ch. 95. Time for completion of, extended, Laws 1857, ch. 82; Laws 1862, ch. 357. Relative to satisfaction of judgments against, Laws 1854, ch. 236. May acquire title to real estate, how, Laws 1853, ch. 592. (See Erie Railway.)

Fayetteville and Syracuse Plank Road.—May lay railroad track, Laws 1868, ch. 829. May lay wooden rail, Laws 1869, ch. 389.

Fifth Ward Railroad (Syracuse.)—Construction of, authorized, Laws 1868, ch. 151.

Fish House and Amsterdam Railroad.—Incorporated, Laws 1832, ch. 316.

Fishkill Railroad.—Incorporated, Laws 1868, ch. 454.

Fishkill to easterly line of New York State).—Public use of railroad from, declared, Laws 1848, ch. 338.

Flushing Railroad.—May construct draw-bridge across Flushing Creek, Laws 1853, ch. 164; Am'd, Laws 1854, ch. 258.

Flushing and North Side Railroad.—May construct draw-bridge over Flushing Creek, Laws 1870, ch. 123. May receive additional fare, Laws 1870, ch. 775. May consolidate with Flushing and Woodside Railroad, and New York and Flushing Railroad, Laws 1869, ch. 142.

Flushing and Woodside Railroad.—Flushing and North Side Railroad may purchase stock of, Laws 1869, ch. 142.

Fonda, Johnstown and Gloversville Railroad.—Articles of association of, legalized and confirmed, Laws 1867, ch. 716. Municipal aid

to, Laws 1867, ch. 17; Laws 1867, ch. 81; Laws 1868, ch. 588. Required to restore public highway to its original line, Laws 1869, ch. 911. Certain claims of town of Johnstown against, discharged, Laws 1870, ch. 305.

Fonda and Ogdensburgh Railroad.—Incorporated, Laws 1866, ch. 894.

Forestport Railroad.—Incorporated, Laws 1868, ch. 505.

"*Forest of Dean Iron Mine*" *to Hudson River.*—Construction of railroad from, authorized, Laws 1865, ch. 273.

Forestport, Grant's Mills and Black River Railroad.—Incorporated, Laws 1867, ch. 949.

Fort Edward, Sandy Hill and Glens Falls Railroad.—Not required to comply with certain provisions of general act, Laws 1863, ch. 28. Construction of, authorized, Laws 1866, ch. 626. Municipal aid to, Laws 1867, ch. 919; Laws 1867, ch. 953; Laws 1868, ch. 32; Laws 1868, ch. 317.

Fredonia and Van Buren Harbor Railroad.—Incorporated, Laws 1836, ch. 417,

Genesee and Cattaraugus Railroad.—Incorporated, Laws 1837, ch. 425.

Genesee and Water Street Railroad (Syracuse).—Provisions of general act construed with reference to, Laws 1866, ch. 388. May extend its road, Laws 1871, ch. 829.

Geneseo Railroad.—Incorporated, Laws 1848, ch. 246. Charter amended, Laws 1849, ch. 4.

Geneseo and Pittsford Railroad.—Incorporated, Laws 1836, ch. 430.

Geneva and Canandaigua Railroad.—Incorporated, Laws 1828, ch. 340. Charter amended, Laws 1831, ch. 307.

Gilboa Railroad.—Incorporated, Laws 1839, ch. 179.

Goshen and Albany Railroad.—Incorporated, Laws 1842, ch. 241. Charter amended, Laws 1844, ch. 95; Laws 1845, ch. 326.

Goshen and Deckertown Railroad.—Weight of rail used by, Laws 1868, ch. 384.

Goshen and New Jersey Railroad.—Incorporated, Laws 1837, ch. 416.

Grand Street and Newtown Railroad (Brooklyn),—Incorporated, Laws 1860, ch. 462. Charter amended, Laws 1862, ch. 199; Laws 1863, ch. 217. Rate of fare on, Laws 1867, ch. 554. May construct double track, &c., Laws 1870, ch. 746.

Grand Street, Prospect Park and Flatbush Railroad.—May extend road, &c., Laws 1870, ch. 530; Am'd, Laws 1871, ch. 743.

Grand Trunk Railway (of Canada).—Legal proceedings against, regulated, Laws 1868, ch. 752.

Great Au Sable Railroad.—Incorporated, Laws 1828, ch. 238. See, also, Laws 1832, ch. 69; Laws 1833, ch. 277; Laws 1837, ch. 414. Charter amended, Laws 1839, ch. 110.

Great Western Railroad (Canada West).—Railroads may take stock in, Laws 1851, ch. 157. Proceedings against, regulated, Laws 1857, ch. 84.

Greene Railroad.—Incorporated, Laws 1838, ch. 179.

Greenpoint, Prospect Park and Greenwood Railroad (Brooklyn).—Construction of, authorized, Laws 1866, ch. 822.

Greenpoint and Calvary Railroad.—Incorporated, Laws 1865, ch. 762.

Greenpoint and Williamsburgh Railroad.—Incorporated, Laws 1864, ch. 323. May consolidate with Nassau Railroad, of Brooklyn, Laws 1868, ch. 576.

Greenwich Railroad Equipment Co.—Incorporated, Laws 1871, ch. 261.

Hackensack and New York Railroad.—May extend road into this State, Laws 1870, ch. 304. May build draw-bridge over Minnisceongo Creek, Laws 1871, ch. 133.

Hallett's Cove Railway.—Incorporated, Laws 1828, ch. 205. Charter amended, Laws 1832, ch. 111; Laws 1837, ch. 3.

Harlem Bridge, Morrisania and Fordham Railroad.—Construction of, authorized, Laws 1863, ch. 361. Weight of rails, &c., used by, Laws 1866, ch. 815; Laws 1871, ch. 658. Fare allowed on, Laws 1867, ch. 892. May lay track in Lincoln Ave., Laws 1871, ch. 658.

Harlem River and Port Chester Railroad.—Incorporated, Laws 1866, ch. 763. Charter amended, Laws 1869, ch. 722; Laws 1871, ch. 605.

Herkimer, Mohawk and Ilion Railroad.—Incorporated, Laws 1865, ch. 769.

Herkimer and Trenton Railroad.—Incorporated, Laws 1836, ch. 344. Charter amended, Laws 1837, ch. 398; Laws 1839, ch. 234.

Hicksville and Cold Spring Branch Railroad.—Incorporated, Laws 1851, ch. 306. Time for completion of, extended, Laws 1859, ch. 138.

Hicksville and Huntington Railroad.—Incorporated, Laws 1865, ch. 536.

Honeoye Railroad.—Incorporated, Laws 1836, ch. 413. Charter am'd, Laws 1837, ch. 191.

Horseheads to Elmira.—Construction of railroad from, authorized, Laws 1866, ch. 659. Act of 1866 revived, Laws 1870, ch. 233.

Housatonic and Northern Railroad.—May accept grant for railroad purposes, made by State of Connecticut, Laws 1865, ch. 672.

Hudson Avenue Railroad (Brooklyn).—Construction of, authorized, Laws 1866, ch. 738. May extend track, &c., Laws 1869, ch. 723.

Hudson and Berkshire Railroad.—Incorporated, Laws 1828, ch. 304. See, also, Laws 1832, ch. 302; Laws 1834, ch. 302. Charter amended, Laws 1837, ch. 113; Laws 1840, ch. 87; Laws 1846, ch. 317. Certain lands granted to, Laws 1839, ch. 380; Am'd, Laws 1849, ch. 366. Municipal aid to, Laws 1837, ch. 412. State aid to, Laws 1840, ch. 179. Comptroller authorized to suspend legal proceedings against, Laws 1850, ch. 237.

Hudson and Delaware Railroad.—Incorporated, Laws 1830, ch. 263. Charter revived, Laws 1835, ch. 126. Charter amended, Laws 1842, ch. 141.

Hudson River Railroad.—Incorporated, Laws 1846, ch. 216. Charter amended, Laws 1848, ch. 30; Laws 1850, ch. 9. Municipal aid to, Laws 1850, ch. 323. May build bridge over Nepperhan Creek, Laws 1866, ch. 705. Restrictions in regard to directors of, Laws 1868, ch. 278; Am'd, Laws 1869, ch. 916.

Hudson River Suspension Bridge and New England Railway.—Hudson Highland Suspension Bridge Co., changed to, Laws 1870, ch. 769.

Hunter's Point, Newtown and Flushing Turnpike Road Co.—Railroad franchise conferred on, Laws 1867, ch. 527.

Hunter's Point, Ravenswood and Astoria Railroad.—Construction of, authorized, Laws 1863, ch. 494.

Hunter's Point and Rockaway Beach Railroad.—Construction of, authorized, Laws 1867, ch. 504.

Ithaca and Athens Railroad.—Ithaca and Tonawanda Railroad changed to, Laws 1870, ch. 23. (See Ithaca and Tonawanda Railroad.)

Ithaca and Auburn Railroad.—Incorporated, Laws 1836, ch. 414.

Ithaca and Geneva Railroad.—Incorporated, Laws 1832, ch. 96.

Ithaca and Owego Railroad.—Incorporated, Laws 1828, ch. 21. Charter amended, Laws 1832, ch. 75; Laws 1834, ch. 261; Laws 1840, ch. 344. State aid to, Laws 1838, ch. 295.

Ithaca and Port Renwick Railroad.—Incorporated, Laws 1834, ch. 114. Charter amended, Laws 1835, ch. 239; Laws 1836, ch. 54. May construct canal, Laws 1835, ch. 239.

Ithaca and Tonawanda Railroad.—Municipal aid to, Laws 1866, ch. 645; Laws 1867, ch. 872. Name changed to Ithaca and Athens Railroad, Laws 1870, ch. 23.

Jamesville Railroad.—Incorporated, Laws 1836, ch. 412.

Johnstown Railroad.—Incorporated, Laws 1836, ch. 342.

Jordan and Skaneateles Railroad.—Incorporated, Laws 1837, ch. 343.

Junction Canal and Railroad.—Incorporated, Laws 1866, ch. 570.

Kingston and Rondout Railroad.—May purchase franchises of Union Plank Road Co., Laws 1866, ch. 110.

Kingston Turnpike and Railroad.—Incorporated, Laws 1835, ch. 130. Charter amended, Laws 1837, ch. 386.

Lake Ontario, Auburn and New York Railroad.—May apply for appraisal of lands, Laws 1854, ch. 231. Authorizing appointment of commissioners to appraise lands taken by, Laws 1857, ch. 380; Am'd, Laws 1858, ch. 300. Corporate existence, &c., of, continued, Laws 1861, ch. 184; see, also, Laws 1869, ch. 805. Municipal aid to, Laws 1860, ch. 405.

Lake Champlain and Ogdensburgh Railroad.—Incorporated, Laws 1832, ch. 205. Charter amended, Laws 1833, ch. 280. Re-incorporated, Laws 1836, ch. 426. New charter amended, Laws 1837, ch. 464. Survey for, authorized, Laws 1838, ch. 300.

Lake Ontario and Hudson River Railroad.—Sackett's Harbor and Saratoga Railroad, changed to, Laws 1857, ch. 280. Act to facilitate construction of, Laws 1860, ch. 37. Extending time for completion of, Laws 1861, ch. 45. (See Sackett's Harbor and Saratoga Railroad.)

Lake Ontario Shore Railroad.—Municipal aid to, Laws 1868, ch. 811; Laws 1869, ch. 241; Laws 1871, ch. 127.

Lansingburgh and Troy Railroad.—Incorporated, Laws 1836, ch. 372.

Lake and River Improvement and Railroad and Land Co. of the New York Wilderness.—Incorporated, Laws 1865, ch. 683.

Lebanon Springs Railroad.—May construct extension of their road, Laws 1853, ch. 25; Am'd, Laws 1853, ch. 461. Time for completion of, extended, Laws 1857, ch. 150; Laws 1860, ch. 285; Laws 1862, ch. 444; Laws 1867, ch. 46. May construct branch road, and create preferred stock, Laws 1864, ch. 145. Municipal aid to, Laws 1866, ch. 373. Railroads may take stock in, Laws 1855, ch. 350.

Lewiston Railroad.—Incorporated, Laws 1836, ch. 260. Charter amended, Laws 1840, ch. 261. To relay track with heavy iron rail, Laws 1849, ch. 256. May change location of road, Laws 1850, ch. 105. May consolidate with Buffalo and Niagara Falls Railroad, Laws 1851, ch. 275; Am'd Laws 1853, ch. 46. Time allowed for construction of road, Laws 1853, ch. 46.

Liverpool and Syracuse Railroad.—Construction of, authorized, Laws 1868, ch. 709.

Lockport and Batavia Railroad.—Incorporated, Laws 1836, ch. 424.

Lockport and Niagara Falls Railroad.—Incorporated, Laws 1834, ch. 177. Charter amended, Laws 1841, ch. 122; Laws 1847, ch. 408. To relay track with heavy iron rail, Laws 1849, ch. 259. May straighten and improve its track, Laws 1851, ch. 227. Act for relief of creditors of, Laws 1850, ch. 111. May increase capital stock, Laws 1837, ch. 99; Laws 1842, ch. 36.

Lockport and Youngstown Railroad.—Incorporated, Laws 1836, ch. 407. Charter revived, Laws 1838, ch. 277.

Long Island Railroad.—Incorporated, Laws 1834, ch. 178. Charter amended, Laws 1839, ch. 277; Laws 1845, ch. 116; Laws 1845, ch. 289; Laws 1847, ch. 166; Laws 1853, ch. 146; Laws 1857, ch. 152; Laws 1859, ch. 444; Laws 1860, ch. 65; Laws 1861, ch. 252; Laws 1861, ch. 577; Laws 1832, ch. 413. May increase capital stock, Laws 1867, ch. 368. May take demise of Brooklyn and Jamaica Railroad, Laws 1836, ch. 94. May construct branch road, Laws 1836, ch. 358; Laws 1869, ch. 101. State aid to, Laws 1840, ch. 193. Time for reimbursement of stock issued by State in aid of, fixed, Laws 1858, ch. 36. Act supplementary to charter, Laws 1859, ch. 444. Closing tunnel of, in Atlantic street (Brooklyn), Laws 1859, ch. 484; Am'd, Laws 1860, ch. 100. Municipal aid to, Laws 1869, ch. 101.

Long Island City and Calvary Cemetery Railroad.—Incorporated, Laws 1871, ch. 681.

Madison County Railroad.—Incorporated, Laws 1829, ch. 160. Charter amended, Laws 1836, ch. 409.

Malden Railroad.—Incorporated, Laws 1837, ch. 421. See, also, Laws 1863, ch. 478. Charter amended, Laws 1866, ch. 689.

Manheim and Salisbury Railroad.—Incorporated, Laws 1834, ch. 195. Charter amended, Laws 1836, ch. 442. Name changed to Mohawk and St. Lawrence Railroad, Laws 1837, ch. 387.

Maspeth Railroad and Bridge Co.—Williamsburgh and Newtown Railroad may consolidate with Maspeth Ave. and Toll-bridge Co. and form, Laws 1867, ch. 598. (See Williamsburgh and Newtown Railroad.)

Mayville and Portland Railroad.—Incorporated, Laws 1832, ch. 62. Charter amended, Laws 1834, ch. 96; Laws 1837, ch. 393.

Medina and Darien Railroad.—Incorporated, Laws 1834, ch. 276. Charter amended, Laws 1839, ch. 215.

Medina and Lake Ontario Railroad.—Incorporated, Laws 1836, ch. 340.

Metropolitan Railroad (Brooklyn).—Construction of, authorized, Laws 1866, ch. 910.

Middleburgh and Schoharie Railroad.—Municipal aid to, Laws 1867, ch. 808; Am'd, Laws 1868, ch. 57. Weight of rail used by, Laws 1868, ch. 57.

Middletown and Crawford Railroad.—Municipal aid to, Laws 1868, ch. 783. Weight of rail used by, Laws 1871, ch. 453.

Middletown Horse Railroad.—Incorporated, Laws 1870, ch. 367.

Middletown, Unionville and Water Gap Railroad.—Weight of rail used by, Laws 1868, ch. 365.

Mohawk and Hudson Railroad.—Incorporated, Laws 1826, ch. 253. Charter amended, Laws 1828, ch. 122. May construct branch road, Laws 1832, ch. 79. May increase capital stock, Laws 1834, ch. 20; Laws 1834, ch. 39. May discontinue part of road, borrow money, &c., Laws 1837, ch. 383. May construct new section of road, Laws 1838, ch. 224. Name changed to Albany and Susquehanna Railroad, Laws 1847, ch. 91. (See Albany and Susquehanna Railroad.)

Mohawk and Moose River Railroad.—Incorporated, Laws 1857, ch. 425.

Mohawk and St. Lawrence Railroad.—Manheim and Salisbury Railroad changed to, Laws 1837, ch. 387. (See Manheim and Salisbury Railroad.)

Mohawk Valley Railroad.—May consolidate with Syracuse and Utica Railroad, Laws 1853, ch. 76.

Mohawk Valley and Piseco Railroad.—Incorporated, Laws 1863, ch. 152.

Montgomery and Erie Railroad.—Municipal aid to, Laws 1867, ch. 387.

Monticello and Port Jervis Railroad.—Organization, &c. of, confirmed, Laws 1869, ch. 111. Municipal aid to, Laws 1868, ch. 553; Am'd Laws 1869, ch. 96. Town bonds issued by commissioners in aid of, legalized, Laws 1871, ch. 809.

Nassau Railroad (Brooklyn).—Construction of, authorized, Laws 1866, ch. 823. Change of route of, Laws 1868, ch. 286. May consolidate with Greenpoint and Williamsburgh Railroad, Laws 1868, ch. 576.

Newark Railroad.—Incorporated, Laws 1836, ch. 428.

New Brighton and Onondaga Valley Railroad.—Incorporated, Laws 1869, ch. 580. Charter amended, Laws 1870, ch. 243.

Newburgh Horse Railroad.—Construction of, authorized, Laws 1868, ch. 489.

Newburgh and Wallkill Valley Railroad.—Act to facilitate the construction of, Laws 1868, ch. 802.

Newtown and Flushing Railroad.—May construct drawbridge over Flushing creek, Laws 1871, ch. 513.

New York and Albany Railroad.—Incorporated, Laws 1832, ch. 162. Charter amended, Laws 1833, ch. 275; Laws 1836, ch. 268; Laws 1837, ch. 411; Laws 1838, ch. 299; Laws 1842, ch. 184. May borrow money, Laws 1839, ch. 183. Time for completion of, extended, Laws 1871, ch. 258.

New York Bridge Co.—Railroad franchise conferred on, Laws 1869, ch. 26.

New York and Brooklyn Iron Tubular Tunnel Company.—Incorporated, and railroad frachise conferred on, Laws 1868, ch. 550. Charter amended, Laws 1869, ch. 253.

New York and Brooklyn Rail Way Dock Co.—Incorporated, Laws 1827, ch. 303.

New York Central Railroad.—Relative to payment of fare on, Laws 1857, ch. 228; Am'd Laws 1858, ch. 137. May erect railroad station in village of Geddes, Laws 1860, ch. 452. May run cars in streets of Buffalo, Laws 1866, ch. 851. Highway tax of, how applied, Laws 1862, ch. 120. Restrictions in regard to directors of, Laws 1868, ch. 278; Am'd Laws 1869, ch. 916. May increase capital stock, Laws 1869, ch. 918. Disposition of highway tax paid by, Laws 1862, ch. 120; Am'd Laws 1871, ch. 430.

New York City Central Underground Railway.—Incorporated, Laws 1868, ch. 230. Charter amended, Laws 1869, ch. 824.

New York and Connecticut Railroad.—Incorporated, Laws 1846, ch. 215.

New York and Erie Railroad.—Incorporated, Laws 1832, ch. 224. Charter amended, Laws 1833, ch. 182; Laws 1835, ch. 247; Laws 1842, ch. 227; Laws 1844, ch. 118; Laws 1857, ch. 256: Laws 1860, ch. 160; Laws 1861, ch. 119; Laws 1862, ch. 66. Survey of route authorized, Laws 1834, ch. 311. Commissioners appointed to determine route of, Laws 1846, ch. 199. State aid to, Laws 1836, ch. 170; Laws 1836, ch. 226; Laws 1840, ch. 196; Laws 1845, ch. 325; Laws 1846, ch. 318. Sale of, postponed, and company allowed to resume construction of road, Laws 1843, ch. 200. May construct branch to Newburgh, Laws 1845, ch. 49; constructed, Laws 1848, ch. 261. Relating to sale of, under foreclosure, Laws 1860, ch. 160. Incorporation of purchasers of, under foreclosure sale, Laws 1861, ch. 119. (See Erie Railway.)

New York and Flushing Railroad.—Weight of rail used by, Laws 1861, ch. 105. May be consolidated with Flushing and Northside Railroad, Laws 1869, ch. 142.

New York and Harlem Railroad.—Incorporated Laws 1831, ch. 263. Charter amended, Laws 1832, ch. 93; Laws 1835, ch. 101; Laws 1836, ch. 305; Laws 1837, ch. 55; Laws 1839, ch. 166; Laws 1840, ch. 242; Laws 1845, ch. 333; Laws 1846, ch. 200; Laws 1848, ch. 143; Laws 1849, ch. 75; Laws 1849, ch. 317. Relating to use of streets of New York by, Laws 1859, ch. 387; Laws 1867, ch. 880. Par value of shares, reduced, Laws 1855, ch. 297. Increase of capital stock, regulated, Laws 1852, ch. 152; Laws 1853, ch. 28. Restrictions in regard to directors of, Laws 1868, ch. 278; Am'd, Laws 1869, ch. 916. Relation to bridges of, Laws 1857, ch. 207. Act in relation to new passenger depot of, in the city of New York, Laws 1869, ch. 919.

New York and Highland Suspension Bridge Railway,—May build bridge over Harlem river, Laws 1869, ch. 794.

New York, Housatonic and Northern Railroad.—May accept grant for railroad purposes, from State of Connecticut, Laws 1865, ch. 672. Act in relation to, Laws 1868, ch. 363.

New York and Jamaica Railroad.—Long Island Railroad may purchase, Laws, 1860, ch. 65.

New York and New Haven Railroad.—May extend its road from Connecticut line to connect with N. Y. and Harlem Railroad, Laws 1846, ch. 195.

New York and New Rochelle Railroad.—Time for construction of, extended, Laws 1854, ch. 42. May construct bridges across Harlem and other rivers, Laws 1852, ch. 382.

New York Northern Railroad.—Incorporated, Laws 1866, ch. 845. Charter amended, Laws 1871, ch. 314.

New York and Oswego Midland Railroad.—Municipal aid to, Laws 1866, ch. 398; Laws 1867, ch. 917; Laws 1868, ch. 61; Laws 1869, ch. 84. May extend road. Laws 1871, ch. 298. May consolidate with Utica, Clinton, and Binghampton Railroad, &c., Laws 1870, ch. 794.

New York Railway.—Incorporated, Laws 1871, ch. 300. Act supplementary to charter, Laws 1871, ch. 808.

New York and Rockaway Railroad.—May construct draw-bridge over Foster's meadow canal, Laws 1871, ch. 615.

New York and White Plains Railroad.—May construct draw-bridge over Bronx River, Laws 1871, ch. 862.

Niagara Falls Suspension Bridge Company.—Railroad franchise conferred on, Laws 1867, ch. 239.

Niagara Street Railroad (Buffalo.)—Manner of acquiring land for, Laws 1860, ch. 145. Grant to, confirmed, Laws 1867, ch. 131. Buffalo Street Railroad may purchase, Laws 1868, ch. 322.

Ninth Avenue Railroad.—Confirming grant to, Laws 1860, ch. 411. May use portion of track of Dry Dock, East Broadway and Battery Railroad, Laws 1866, ch. 868.

Northern Railroad.—Incorporated, Laws 1845, ch. 324. May borrow money, Laws 1847, ch. 25. Compensation of trustees of second mortgage bonds of, Laws 1865, ch. 286. Time for construction of, extended, Laws 1854, ch. 60. May increase capital stock, Laws 1851, ch. 228. May take stock in railroad to Pottsdam, Laws 1851, ch. 262. May extend road, Laws 1851, ch. 342. Stockholders and bondholders of, authorized to form Ogdensburgh and Champlain Railroad, Laws 1855, ch. 401. Formation of Railroad in place of late, authorized, Laws 1857, ch. 199. Am'd Laws 1858, ch. 230; Am'd Laws, 1864, ch. 142. (See Ogdensburgh and Lake Champlain Railroad.)

Northern Railroad (of New Jersey.)—May construct part of its road in this State, Laws 1858, ch. 253.

Northern Pacific Railway.—Concurrent resolutions relative to, Laws 1867, page 2494.

Northern Slackwater and Railway.—Incorporated, Laws 1846, ch. 311. Charter amended, Laws 1848, ch. 274.

North Side Railroad (L. I.)—May construct draw-bridges, Laws 1867, ch. 676.

North Shore Railroad (L. I.)—May construct draw-bridge over Little Neck Creek, Laws 1864, ch. 250. Weight of rail used by, Laws 1864, ch. 250.

Oakwood Street Railroad (Syracuse).—May change route of its road, Laws 1871, ch. 901.

Ogdensburgh, Clayton, and Rome Railroad.—Municipal aid to, Laws 1853, ch. 283. Am'd Laws 1860, ch. 327. May apply for appraisal of lands, Laws 1854, ch. 11.

Ogdensburgh and Lake Champlain Railroad.—Incorporated in place of Northern Railroad dissolved, Laws 1857, ch. 119. Charter amended, Laws 1866, ch. 27. Survey of, authorized, Laws 1838, ch. 300; Laws 1840, ch. 233; Laws 1848, ch. 346. Municipal aid to, Laws 1866, ch. 182; Am'd Laws 1869, ch. 813. May construct branch road, Laws 1866, ch. 182. To grant facilities for transportation to Plattsburgh and Montreal Railroad, Laws 1866, ch. 46. May issue additional stock, Laws 1871, ch. 790. (See Northern Railroad.)

Ogdensburgh Marine Railroad.—May borrow money, Laws 1854, ch. 21.

Olean Village to Erie Railway depot at Olean.—Act authorizing construction of railroad from, Laws 1868, ch. 679.

One Hundred and Twenty-fifth Street Railroad (N. Y.)—Sale of franchise for, Laws 1870, ch. 504.

Oneida Valley Railroad.—Incorporated, Laws 1864, ch. 397.

Orange and Sussex Canal Company.—Railroad franchise conferred on, Laws 1828, ch. 169.

Oswego (*Fortification Grounds in City of*).—Consent State of New York, granted to railroads to cross, Laws 1870, ch. 70.

Oswego (*Towns in County of*).—May aid in construction of railroad in said county, Laws 1869, ch. 451.

Oswego City Street Railroad.—Construction of, authorized, Laws 1869, ch. 636.

Oswego, Binghampton, and New York Railroad.—Time for completion of, extended, Laws 1857, ch. 242.

Oswego and Cortland Railroad.—Incorporated, Laws 1836, ch. 431.

Oswego Marine Railroad.—Incorporated, Laws 1831, ch. 196.

Oswego and Rome Railroad.—Weight of rail used by, Laws 1863, ch. 292. May issue preferred stock, Laws 1866, ch. 544. Buildings of, in city of Oswego, how located, &c., Laws 1865, ch. 245.

Oswego and Syracuse Railroad.—Incorporated, Laws 1839, ch. 270. Charter amended, Laws 1841, ch. 17. Charter revived, Laws 1845, ch. 320. Charter amended, Laws 1847, ch. 65. May consolidate with Syracuse and Binghamton Railroad, Laws 1853, ch. 205. May erect railroad station in village of Geddes, Laws 1860, ch. 452. May change time for election of directors, Laws 1864, ch. 188. Transportation of freight on, Laws 1847, ch. 270.

Oswego and Troy Railroad.—Municipal aid to, Laws 1854, ch. 375.

Oswego and Utica Railroad.—Incorporated, Laws 1836, ch. 343. Charter amended, Laws 1838, ch. 98.

Otsego Railroad.—Incorporated, Laws 1832, ch. 313.

Panama Railroad.—Incorporated, Laws 1849, ch. 284. Charter amended, Laws 1855, ch. 364.

Park Ave. Railroad (Brooklyn).—Construction of, authorized, Laws 1870, ch. 600.

Penfield and Canal Railroad.—Incorporated, Laws 1837, ch. 345.

Plank Road Railroad.—Incorporated, Laws 1866, ch. 749. Charter amended, Laws 1871, ch. 716.

Plattsburgh and Montreal Railroad.—Public use of, declared, Laws 1849, ch. 265. May increase rate of fare, Laws 1858, ch. 154. Number of directors of, reduced, Laws 1866, ch. 486. To grant facilities for transportation to Ogdensburgh and Lake Champlain Railroad, Laws 1866, ch. 46. Act for benefit of holders of mortgage bonds of, Laws 1867, ch. 376.

Plattsburgh and Ronse's Point Railroad.—May construct draw-bridge over Big Chazy River, Laws 1851, ch. 520.

Pneumatic Transit Co. (N. Y. City).—Incorporated Laws 1868, ch. 842. Charter amended, Laws 1869, ch. 512.

Port Byron and Auburn Railroad.—Incorporated, Laws 1829, ch. 154.

Pottsdam and Watertown Railroad.—May commence construction of its road, Laws 1852, ch. 160. Discharge of judgment against, Laws 1853, ch. 229. May increase rate of fare, Laws 1859, ch. 217.

Poughkeepsie City Railroad.—Incorporated, Laws 1866, ch. 368. See, also, Laws 1869, ch. 654.

Poughkeepsie and Eastern Railroad.—Incorporated, Laws 1866, ch. 546. Charter amended, Laws 1868, ch. 551; Am'd, Laws 1869, ch. 600; Am'd Laws 1871, ch. 838. Cancellation of bonds of, Laws 1871, ch. 23.

Pullman Pacific Car Co.—Incorporated, Laws 1868, ch. 319.

Queens County Railroad.—Weight of rail used by, Laws 1871, ch. 556.

Ravenswood, Hallett's Cove and Williamsburgh Turnpike.—Railroad franchise conferred on, Laws 1860, ch. 198. See, also, Laws 1863, ch. 494.

Rensselaer and Saratoga Railroad.—Incorporated, Laws 1832, ch. 131. Charter amended, Laws 1842, ch. 232. Capital stock increased, Laws 1836, ch. 118. May borrow money, Laws 1838, ch. 280. Manner of forming train, Laws 1864, ch. 107.

Rio de Janeiro Street Railroad.—Management of, regulated, Laws 1870, ch. 763.

Rochester and Brighton Railroad.—Rate of fare on, &c., Laws 1865, ch. 754.

Rochester Canal and Railroad.—Incorporated, Laws 1831, ch. 89. Charter amended, Laws 1833, ch. 26.

Rochester and Charlotte Railroad.—Incorporated, Laws 1836, ch. 411.

Rochester City and Brighton Railroad.—May operate railroad, &c., Laws 1869, ch. 34.

Rochester and Genesee Valley Railroad.—Election of directors for, Laws 1851, ch. 387, § 290; Am'd, Laws 1867, ch. 59. Municipal aid to, Laws 1853, ch. 287. City of Rochester authorized to sell stock of, Laws 1860, ch. 430; Am'd, Laws 1868, ch. 232.

Rochester and Lockport Railroad.—Incorporated, Laws 1837, ch. 427. Charter amended, Laws 1838, ch. 303.

Rochester, Lockport and Niagara Falls Railroad.—May straighten its track, Laws 1851, ch. 227. May loan its credit to railroad from Lockport to Tonawanda, Laws 1852, ch. 297. May consolidate with the Buffalo and Rochester Railroad, Laws 1853, ch. 76.

Rochester and Pine Creek Railroad.—Rate of passenger fare on, Laws 1871, ch. 549.

Rochester and Syracuse Railroad.—May consolidate with the Buffalo & Rochester Railroad, &c., Laws 1853, ch. 76.

Rome and Clinton Railroad.—Municipal aid to, Laws 1869, ch. 592; Am'd Laws 1870, ch. 505.

Rome and Oswego Railroad.—May abandon part of its road, Laws 1854, ch. 30. May sell or lease part of its road, Laws 1855, ch. 452.

Rome and Port Ontario Railroad.—Incorporated, Laws 1837, ch. 417.

Rondout and Oswego Railroad.—Municipal aid to, Laws 1866, ch. 648; Laws 1867, ch. 838; Laws 1869, ch. 11; Laws 1870, ch. 397; Laws 1871, ch. 682. May increase rate of fare, Laws 1870, ch. 510. Extension of, by steam ferry, Laws 1871, ch. 458.

Rondout and Port Jervis Railroad.—Time for completion of, extended, Laws 1870, ch. 512.

Rotland and Whitehall Railroad.—Incorporated, Laws 1836, ch. 418.

Sackett's Harbor Railroad.—Extending power of, to purchase land, Laws 1855, ch. 122.

Sackett's Harbor and Ellisburgh Railroad.—Act in relation to, Laws 1851, ch. 403. May increase rate of fare, Laws 1857, ch. 740.

Sackett's Harbor, Rome and New York Railroad.—Capital stock reduced, Laws 1860, ch. 343.

Sackett's Harbor and Saratoga Railroad.—Incorporated, Laws 1848, ch. 207. Charter amended, Laws 1851, ch. 72; Laws 1853, ch. 244; Laws 1855, ch. 122. May construct portion of its road in Warren and Essex counties, Laws 1854, ch. 273. Lands of, exempt from taxation, Laws 1857, ch. 98. Name changed to Lake Ontario and Hudson River Railroad, Laws 1857, ch. 280. (See Lake Ontario and Hudson River Railroad.)

Sackett Street Railroad (Brooklyn).—Construction of, authorized, Laws 1866, ch. 913.*

Salina and Port Watson Railroad.—Incorporated, Laws 1829, ch. 276.

Saratoga (Towns in County of) may aid in construction of railroad from Mechanicsville to towns of Moreau and Fort Edward, &c., Laws 1868, ch. 334; Laws 1869, ch. 514.

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Saratoga and Fort Edward Railroad.—Incorporated, Laws 1832, ch. 166.

Saratoga and Montgomery Railroad.—Incorporated, Laws 1836, ch. 261.

Saratoga and Schenectady Railroad.—Incorporated, Laws 1831, ch. 43. Charter amended, Laws 1831, ch. 144. May use part of track of Utica and Schenectady Railroad, Laws 1838, ch. 282.

Saratoga Springs (*Village of*).—Railroad in, authorized, Laws 1870, ch. 675.

Saratoga Springs and Schuylerville Railroad.—Incorporated, Laws 1832, ch. 315.

Saratoga and Washington Railroad.—Incorporated, Laws 1834, ch. 249. Charter amended, Laws 1840, ch. 109; Laws 1844, ch. 267; Laws 1847, ch. 58; Laws 1848, ch. 74. Time for completion of, extended, Laws 1850, ch. 149.

Schenectady and Catskill Railroad.—Incorporated, Laws 1846, ch. 313. Charter amended, Laws 1848, ch. 67; Laws 1850, ch. 53.

Schenectady and Ogdensburgh Railroad.—Survey for route of, authorized, Laws, 1866, ch. 897.

Schenectady and Susquehanna Railroad.—Incorporated, Laws 1846, ch. 308.

Schenectady and Troy Railroad.—Incorporated, Laws 1836, ch. 427. Charter amended, Laws 1839, ch. 31. State aid to, Laws 1840, ch. 299. Capital stock increased, Laws 1843, ch. 135. Authorizing tax in city of Troy for payment of debts of, Laws 1850, ch. 224. May consolidate with Albany and Schenectady Railroad, &c., Laws 1853, ch. 76. Report required of, Laws 1847, ch. 270.

Schenectady and Utica Railroad.—Time for construction of road extended, Laws 1869, ch. 751.

Schoharie (*Village of*).—Construction of horse-railway in, authorized, Laws 1871, ch. 281.

Schoharie and Otsego River Railroad.—Incorporated, Laws 1832, ch. 262.

Schoharie Valley Railroad.—Number of directors of, reduced, Laws 1867, ch. 616. Municipal aid to, Laws 1866, ch. 160; Laws 1868, ch. 307; Laws 1871, ch. 889.

Scottsville and Canandaigua Railroad.—Incorporated, Laws 1838, ch. 210.

Scottsville and Le Roy Railroad.—Incorporated, Laws 1836, ch. 420. Charter amended, Laws 1837, ch. 289.

Second Avenue Railroad (New York).—May construct draw-bridge across Harlem River, Laws 1855, ch. 373. May discontinue portion of road, Laws 1857, ch. 319; Laws 1857, ch. 551.

Seneca Falls and Waterloo Railroad.—Incorporated, Laws 1866, ch. 197.

Seneca Street Railroad (Buffalo).—Acts of common council in reference to, confirmed, Laws 1866, ch. 375.

Sharon and Root Railroad.—Incorporated, Laws 1838, ch. 304.

Sheepshead Bay and Sea Shore Railroad.—Construction of, authorized, Laws 1865, ch. 769.

Silver Lake Railroad.—Municipal aid to, Laws 1869, ch. 25.

Sinnomahoning Portage Railroad (Pa.)—Buffalo and Washington Railroad may consolidate with, Laws 1866, ch. 672.

Skaneateles Railroad.—Incorporated, Laws 1836, ch. 371. Charter amended, Laws 1838, ch. 68; Laws 1841, ch. 135; Laws 1845, ch. 50. Re-incorporated, Laws 1866, ch. 635. New charter amended, Laws 1867, ch. 175; Laws 1868, ch. 383. Weight of rails used by, Laws 1866, ch. 662; Am'd Laws 1867, ch. 699; Am'd Laws 1869, ch. 188.

Sodus Point Railroad.—Relative to inspectors of election for directors of, Laws 1855, ch. 174; Am'd Laws 1856, ch. 152.

Sodus Point and Southern Railroad.—Municipal aid to, Laws 1853, ch. 361; Am'd Laws 1854, ch. 361. Railroads may subscribe to capital stock of, Laws 1853, ch. 425. Appointing inspectors of election for directors of, Laws 1855, ch. 174. Time for completion of, extended, Laws 1860, ch. 284; Laws 1870, ch. 240.

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Utica City Railroad.—May change name to Utica and Waterville Railroad, Laws 1864, ch. 177. Municipal aid to, Laws 1866, ch. 376. May apply for appraisal of lands, Laws 1866, ch. 827.

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